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**Vol. III**  
**TRANSCRIPT OF RECORD**

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**Supreme Court of the United States**

**OCTOBER TERM, 1940**

**No. 537**

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**FASHION ORIGINATORS' GUILD OF AMERICA,  
INC., ET AL., PETITIONERS,**

*vs.*

**FEDERAL TRADE COMMISSION**

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• **ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE SECOND CIRCUIT**

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**PETITION FOR CERTIORARI FILED OCTOBER 31, 1940.**

**CERTIORARI GRANTED NOVEMBER 25, 1940.**

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Court Room No. 313,  
U. S. Post Office Building,  
Philadelphia, Pa., August 7, 1936.

Met pursuant to adjournment, 9 A. M.

Before: JOHN W. BENNETT, Examiner.

APPEARANCES:

E. F. HAYCRAFT, Esq., and R. J. MARTIN, Esq., appearing  
for the Federal Trade Commission.

MILTON C. WEISMAN, Esq., GEORGE FELDMAN, Esq., HER-  
BERT S. KELLER, Esq., and M. A. ALBERT, Esq., appearing  
for the Fashion Originators Guild of America, Inc. 4850

ALLEN S. OLMSTED 2ND, Esq., of SAUL, EWING, REMICK &  
SAUL, 2301 Packard Building, Philadelphia, Pa., ap-  
pearing for John Wanamaker of Philadelphia.

PAUL FREEMAN, Esq., appearing for Strawbridge &  
Clothier, Philadelphia.

I. I. JAMISON, Esq., of SUNDHEIM, FOLZ & SUNDHEIM, 1632  
Bankers Securities Building, Philadelphia, Pa., appear-  
ing for Lit Brothers, Philadelphia.

PROCEEDINGS.

Examiner Bennett: Be in order, please. You 4851  
may proceed.

KENNETH MARCH resumed the stand and testified fur-  
ther as follows:

*Cross-examination (continued).*

The Witness: Your Honor, may I say something?

Examiner Bennett: Just a moment. We are in  
session.

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*Kenneth March—For Commission—Cross.*

Mr. Freeman, you made a rather grave interference yesterday with the proceedings. I wish you would tell us directly why you did so.

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Mr. Freeman: As counsel for Strawbridge & Clothier, I desire to have noted on the record a statement of the reasons which caused me to direct the witness to refuse to answer the question as to the sources of supply used by Strawbridge & Clothier. There is probably nothing which would so seriously harm a department store as the disclosure of the facts surrounding its purchases of goods. Competitors and others could make use of this information to the harm both of Strawbridge & Clothier and to their sources of supply. Furthermore, not only is this a public hearing but, in addition, during most of the times that the hearing has been in session there has been present a reporter from a widely circulated trade paper, namely, "Women's Wear," which has already printed articles disclosing to the entire trade certain figures, etc., given, and the figures which Strawbridge & Clothier seriously object to becoming known to the entire trade and the publication of which Strawbridge & Clothier have endeavored in vain to prevent.

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In addition, Strawbridge & Clothier is apprehensive that should the names of the sources of supply be disclosed, it would make possible an attempt to cut off the supply which they are now enjoying. It has always been the policy of Strawbridge & Clothier not to divulge to the trade the names of the resources, the prices, terms, and other trade arrangements which it may have.

That is all, sir.

Mr. Weisman: Now, may it please your Honor—

Examiner Bennett: Yes. Well, I will just say that I asked the attorney to make such a statement because I wanted to see why he interfered.

Mr. Weisman: Have you finished?

Mr. Freeman: No, sir.

Mr. Weisman: Excuse me. I thought you had.

Mr. Freeman: I desire to add that the A.M.C. is no exception to the policy pursued by Strawbridge & Clothier in respect to their failure—in respect to their desire not to disclose the resources which they are using—resources, prices, and trade arrangements which they are using.

Examiner Bennett: All right.

Mr. Freeman: Thanks.

Mr. Weisman: In reply, or in response to the statement made by Mr. Freeman, counsel for Strawbridge & Clothier, I respectfully ask that all I have stated yesterday be deemed in answer to his present statement. I don't want to burden the record with a repetition. I furthermore wish to state that I deem Mr. Freeman's statement that he fears that if he discloses the sources of supply that the same will be cut off to be highly improper, not founded on fact, merely a malevolent effort to injure us in the eyes of the Examiner and the Commission.

As a matter of fact, the complaint here is that we have merely refused to do business with them, that we would have or have refused to do business with them, and we were quite content to go along without doing business with them until they instigated this complaint, as witness the various witnesses' statements again and again that they filed affidavits, et cetera, and so forth, to accelerate this complaint, and to bring it on. I therefore say, in so far as that statement is concerned, it must be perfectly apparent that it is made in bad faith and, not in good faith.

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*Kenneth March—For Commission—Cross.*

I further wish to state that from information furnished to me, the reference to keeping from the A.M.C. secret the various trade practices, trade discounts, et cetera, made by Strawbridge & Clothier at the proper time—I say this with all due solemnity—I will prove that it is wholly unfounded in fact, and that the member stores of this organization, the A.M.C., do interchange and change information, do pool their orders, and they are acting together, as witness the very exhibit offered in evidence by the Commission in this case which started out, “We act”—on the A.M.C. stationery—~~“We~~, acting on behalf of eighteen member stores—one of which was Filene, and the other of which to-day was the only other witness, retail witness that has testified, members of Strawbridge & Clothier.

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In conclusion, I wish to state, and I wish to have this on the record, that this does appear to me, and I say this with all due humility, as the most unreasonable and fantastic legal inquiry that I have ever taken part in. I can only compare it to the old Arabian Nights. The King comes in and he says, “I am going to tell you a story.” Whereupon Mr. Tily comes in and tells a story. You come to Mr. Tily and you say to the King, “Well, now, what do you know about this store?”

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Examiner Bennett: Now—

Mr. Weisman: May it please your Honor, I ask that—

Examiner Bennett: I know. I know.

Mr. Weisman: —this analogy be in the record.

Examiner Bennett: You are taking up a lot of time.

Mr. Weisman: Well, it will just take me a moment, your Honor.

Examiner Bennett: Yes.



Mr. Weisman: And we asked Mr. Tily, and he says, "Oh, someone beneath me will explain that." So along comes Mr. Taylor. We ask Mr. Taylor about it, and he says, "Oh, my, someone beneath me will tell that." And along comes Mr. Chance, and we all sit here expectantly. We finally get to some facts and not to some hearsay or surmise, and Mr. Chance says, "Oh, my buyers know all about that." Lo and behold, we finally see that the buyer is coming in, and the buyer takes the stand and when we seek to get some information from him, figuratively the King orders his head cut off and you can't question him, and you have got to accept his story as a fact.

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Now, I submit to your Honor that this is the most fantastic, and that is the only word that can fit this situation.

Examiner Bennett: Yes.

Mr. Weisman: And if your Honor—

Examiner Bennett: Well—

Mr. Weisman: If this ruling is to be made in this case, I respectfully now, in view of the reiterated statement of counsel for Strawbridge & Clothier, in view of the reiterated stand, because I assume—that of the counsel for the Commission, who joins in this situation, or in this course of conduct, because he could very easily obviate it by serving a subpoena on this witness so that he might be compelled to answer, I respectfully move for your most serious deliberation. In the protection of our traditional and constitutional rights that all testimony of Messrs. Tily, Chance, Taylor and this witness as to their inability to obtain sufficient merchandise of the kind and character referred to, be stricken out from the record because notwithstanding the fact that their claim is in the record to

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*Kenneth March—For Commission—Cross.*

that effect, when I seek to cross-examine them to show an untruth and, in fact, that they had an adequate source of supply, the sources from whom they got it, et cetera, I am shut off by this stand.

Examiner Bennett: All right. Are you through?

Mr. Weisman: Yes, your Honor.

Examiner Bennett: Yes. Well——

Mr. Haycraft: I would like to make a very short statement, your Honor.

Examiner Bennett: You may proceed. Make it short.

Mr. Haycraft: I will make it very short.

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As I pointed out in yesterday's session, I have no objection to eliciting from this witness or any other witness the names of available sources of supply. In other words——

Examiner Bennett: I didn't——

Mr. Haycraft: In cross-examination of this witness, if he can divulge that I have no objection to it. The only thing I have an objection on record against is the disclosing of what is recognized in the courts of law as well as by the Commission, as being confidential information in the possession of witnesses who are not parties to the proceedings. And in that connection, I wish to make it very clear on the record that Strawbridge & Clothier is not a party to this proceeding, did not volunteer any evidence, did not appear until subpoenaed, and every bit of evidence that has been brought in here pursuant to my request and upon my demand.

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Examiner Bennett: All right.

Mr. Weisman: Just one short statement. The witnesses have again and again referred to affidavits that they have voluntarily furnished to Mr. Haycraft. He has had those affidavits in court; he has examined from them. He has constantly re-



ferred to them, and I submit the statement that Strawbridge & Clothier did not inspire and are not directly interested in this proceeding is entirely without fact.

Mr. Haycraft: Now, be careful. Be a little careful about that. I want to make it very plain in the record that the statement made by counsel for the respondent is wholly without foundation and fact, that the affidavits referred to by the witnesses were ones which I asked for myself. The Federal Trade Commission in this case conducted an investigation, which it has a right to do under the statutes. As a result of this investigation, information was obtained, and only as a result of this investigation. These witnesses and this firm in no way sponsored or brought about this proceeding, and in no way volunteered any information until requested to produce such information upon demand of subpoena.

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Mr. Weisman: Upon demand of the Federal Trade Commission—

Examiner Bennett: We are not going to have any more. We are not going to have any more of this made in the record.

Mr. Weisman: All right.

Examiner Bennett: And I will say to the attorney for the respondent that his attack on the Tribunal is unwarranted in fact wholly as leads the Examiner to believe that he is trying to obstruct this proceeding instead of aiding and bring it to a conclusion.

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All of the facts are presented, and I am going to take the position further in this matter that no substantial right of respondent is jeopardized by failure to disclose specifically, failure of this witness to disclose specifically the source of supply with which he actually did business.

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*Kenneth March—For Commission—Cross.*

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Mr. Weisman: I respectfully except.

Examiner Bennett: All right.

Mr. Weisman: May I also say that I was not attacking the Commission. I was attacking the good faith of Strawbridge & Clothier.

Examiner Bennett: You are attacking this proceeding in a most unseemly manner.

Mr. Weisman: Well, I am——

Examiner Bennett: And I resent it.

Mr. Weisman: I regret—I regret exceedingly that my conduct has caused resentment in the mind of the Examiner.

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Examiner Bennett: Well, I resent that sort of statement. It isn't a personal matter.

Mr. Weisman: I believe that before this case is over your Honor will see that what I have said is well founded.

Examiner Bennett: Yes. Well, I will be glad to have the truth.

Mr. Weisman: Yes. That is one of the things that we are going to prove on our affirmative case.

Examiner Bennett: All right, you may proceed.

The Witness: Your Honor, may I say something in regard to the testimony that I gave yesterday?

Examiner Bennett: Do you want to correct something?

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The Witness: Yes. I do, sir.

Examiner Bennett: All right, you may correct—

Mr. Weisman: Will you wait a minute? I am looking for something that I want in the complaint, that I want to put in the record, Judge, at this point.

Examiner Bennett: All right. Is it important to do that now, or can't you put that in after?

Mr. Weisman: It will just take me a second, Judge.

In connection with my former statement, I wish to respectfully call the attention to the paragraph 10 of the complaint in this case, subdivisions (b) and (c), which is the summation and the complaint of wrong with regard to the Guild's program. The subdivision (b) claims that as a result of the Guild's program, and that is one of the things that is complained of: "To prevent retail dealers in ladies' and misses' garments from purchasing their requirements of the said products in interstate commerce from the manufacturers thereof."

I assume this is in direct—my endeavor to query is in direct contradiction of that claim. (c) is the further claim to force many retailers to discontinue the sale of their products because of their inability to maintain a supply thereof at reasonable prices. I respectfully submit that by closing off my inquiry as to the facts that they got the merchandise specifically, I am in no position to disprove this claim.

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Examiner Bennett: Well, the Examiner stated at length, at some length yesterday as to his position in the matter.

Mr. Weisman: All right, Judge.

Examiner Bennett: I am not going to take up your time to elaborate upon it.

Mr. Weisman: All right, Judge. I am quite sure that the Court understands that my position is one merely as an attorney.

4875

Examiner Bennett: Oh, I understand that. There is no partiality, that is certain.

Mr. Weisman: That is what I want to be sure of.

Examiner Bennett: Will you make your statement now?

The Witness: Yes, your Honor. When I was being questioned about purchasing dresses from Barham or Baron, I was under the impression that

4876

*Kenneth March—For Commission—Cross.*

Mr. Weisman was talking about Baron dresses, not Barhan. I was confused, and when I got back to the store I realized my mistake, and I would like to have that corrected on the record, if that is possible. It was Baron Brothers I was talking about, not Barhan.

Examiner Bennett: All right. Proceed.

(There was a short discussion off the record.)

*By Mr. Weisman.*

Q. How do you spell "Baron"? A. I do not know how to spell "Baron". He got it out of the directory?

4877

Q. What I want to know is, how you know how to spell it if you do not—you said you distinguished it from another group. I want to know how you were able to do that? A. Well, I know it is different from the other, but I do not know how to spell it.

Q. What priced dresses do Boudon & Tuman, Inc., sell?

A. I do not remember.

Q. Do you not now do business with them?

Mr. Freeman: Do not answer that question.

Mr. Haycraft: I object.

Examiner Bennett: I shall sustain the objection.

In deference to their claim of privilege, I shall sustain the objection.

4878

Mr. Weisman: I except, and I make the offer to prove that if the witness had been permitted to answer he would have said that they do do business with them, and then I would have been able to show from this same witness that they do business with them at the same price they did with Guild houses, and that the merchandise compares favorably with that manufactured by Guild houses, if I had been permitted to continue that line of examination.

Mr. Haycraft: I object to that, Mr. Examiner, and move that it be stricken.

Examiner Bennett: I will let it stand. An offer to prove of that type I will let it stand under the circumstances.

*By Mr. Weisman.*

Q. Did you know them since February 1, 1936? A. No, I did not.

Q. Did you know that they were an available source of supply for you for dresses for Departments 338 and 358?

A. I did hear that they were.

Q. Do you not know that they were? A. I did not know positively. 4880.

Q. Have you discussed your previous testimony and your proposed testimony with anybody over night? A. I have not.

Q. Have you talked over with anybody at all this matter since you left the witness stand last night, anybody connected with Strawbridge & Clothier or representing Strawbridge & Clothier? A. I have not.

Q. Did you not testify yesterday that you did business with them since February 1, 1936? A. I do not believe I said since February 1, 1936.

Q. Did you testify that you did business with them? A. I believe I did.

Q. Do you mean by that that you did business with them prior to February 1, 1936? A. I did not say that I did. 4881

Q. When did you mean that you did business with them when you answered, yes, you were doing business with them? A. I meant that in the course of our business in Department 338 that we did use merchandise from that resource.

Q. When? A. I cannot remember exactly.

Q. You only came into that department on February 19, 1936? A. Yes.



4882

*Kenneth March—For Commission—Cross.*

Q. If you say that you knew that you were doing business with them—that that department had used them for the obtainment of merchandise, did not you mean you thought—did not you mean that you had used them since February 1, 1936? A. I suppose I did, yes.

Q. Aside from your supposition, in fact did not you so mean that? Answer the question, please. A. Well, yes.

Q. What do you mean, "Well, yes," or just "yes"? A. Yes.

Q. Did you look upon them as a good resource? A. As a fair resource, I would say.

Q. When you say "fair" you mean as fair as any of the other resources that were then available to you? A. I would not say that.

Q. Do you mean that they were a poorer resource than the other available resources? A. Possibly, yes.

Q. Not possibly; factually, I want to know. A. I do not do very much business with them, I mean.

Q. Ever since February 1, 1936, you know that the firm of Bowdan & Tuman, Inc., have been ready, willing, and anxious to do business with you, do you not? A. Yes.

Q. You would not have any trouble in getting from them any merchandise that you saw fit to order from them, would you? A. No, sir.

Q. They are quite content with the rating and ability to pay and the standing of your firm, are they? A. Yes.

Q. What priced merchandise do they make? A. I am not certain what price they make.

Q. What is your best idea? A. I would not know. During the summer months manufacturers go into the cheaper priced merchandise, and I would not know.

Q. Aside from the summer months, which is not the regular line, what is their regular line? A. I could not testify as to what price.

Q. You are the buyer for this department and you have testified that you are in charge of the purchases; as such,

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is that part of your duty to go in and know where to get these dresses and to know for what price you can get them for? A. Yes.

Q. Notwithstanding that you do not know that to be a fact; you do not know what they sell goods for, or from whom you can obtain them? A. In this particular case I was only in their showroom once, I believe, and I do not know what price merchandise they are making now.

Q. Do you know that they make \$10.75? A. I know that they are listed under the category of \$10.75 house.

Q. You know that people who are listed under that category usually make that priced merchandise, do you not? A. Usually, but not in all cases.

Q. Oh, not in all cases? A. No.

Q. But it is the usual run of things, is it? A. It is.

Q. You bought merchandise from Sam Bloom & Company since February 1, 1936? A. Yes.

Q. Do you find that their merchandise compares favorably with other manufacturers concerning which or with whom you do business in that department?

Mr. Freeman: Stop. Do not answer.

Mr. Weisman: Mr. Examiner, I object very strenuously to the conduct of Mr. Freeman here. Every time I ask a question he gets up, stands over Mr. Haycraft, and almost over your Honor, holds a piece of paper up in his hand as if he were going to swat a fly, and motions and indicates and directs, coerces, and intimidates this witness by his motions possibly, or at least there is that possibility of his actions. I think that is highly improper. He is not the counsel in this case. The Federal Trade Commission is supposedly conducting this lawsuit. I ask your Honor to direct Mr. Freeman to sit down and conduct himself properly. I think this is highly improper and it is certainly highly prejudicial to

4888

*Kenneth March—For Commission—Cross.*

the substantive rights of the respondents herein from which we will have no recourse if something is not done about it.

Examiner Bennett: Well—

Mr. Freeman: Mr. Examiner.

Mr. Haycraft: I object to that statement. It is entirely uncalled for, and merely reflects Mr. Weisman's opinion on things which are not necessarily the fact.

Mr. Weisman: "Not necessarily," a delightful way out, Mr. Haycraft.

Mr. Haycraft: For you.

4889

Examiner Bennett: Proceed, Mr. Freeman.

Mr. Freeman: Mr. Examiner, I shall object to having any comparison made by the witness comparing for Strawbridge & Clothier as to the various merits of their various sources of supply.

Mr. Weisman: I think it is most vital to our case, if your Honor please. The suppression of the right to examine the witness upon that vitally injures the respondents' case.

Examiner Bennett: Go ahead with the examination. The witness does not have to make comparisons if he does not want to.

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A. I have nothing to compare there, Mr. Weisman. They make stout dresses. I have never bought stout dresses from any Guild manufacturer so I have nothing to compare that merchandise with.

Examiner Bennett: The witness does not have to cast reflections upon a manufacturer. I will not direct any examination with respect to that. That is entirely up to the witness.



*By Mr. Weisman.*

Q. You buy merchandise from the Blockman Company?

A. Yes.

Q. How does their merchandise compare with others that you have customarily dealt with?

Mr. Freeman: Stop.

Mr. Weisman: Stop what?

Mr. Freeman: I merely want to make a statement to the Examiner.

Mr. Weisman: Oh.

Mr. Freeman: I object, Mr. Examiner. I submit that that is along the same line.

Examiner Bennett: Yes. The witness does not have to make comparisons unless he wants to.

4892

The Witness: There, again, I have nothing to compare. They make mourning dresses.

*By Mr. Weisman.*

Q. Are they the only source of supply from whom you have ever bought mourning dresses? A. No.

Q. How do they compare with the others from whom you have bought mourning dresses?

Mr. Freeman: I object to that, if your Honor please.

Examiner Bennett: Yes. I have already made a statement in regard to that. That is sufficient.

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The Witness: This mourning dress is a different item. There is hardly any comparison. People need them in a great hurry when they need them.

*By Mr. Weisman.*

Q. Then, would you say their merchandise was as good as any in the New York market at the same price, manufactured by member of the Guild? A. As good as any mourning dresses in the market, yes.

4894

*Kenneth March—For Commission—Cross.*

Q. You have bought from Bettina for how long? A. I believe ever since they have been in business.

Q. Even when you were dealing with the Guild, when your store was dealing with the Guild, they were still buying dresses from Bettina Frocks; is that so? A. Yes, sir.

Q. Do their dresses compare favorably, both as to character, style, and quality with the other merchandise that you have bought from Guild members? A. We have always been successful with Bettina's merchandise.

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Q. When you say you have always been successful with Bettina's merchandise, you mean that their productions or their numbers or their originations compared favorably with, or were equally as good as those which you got from other sources, including Guild members? A. Bettina makes a different type—Bettina makes a certain type.

Q. In that type are they as good as Guild members? A. Yes, in that type they are as good as Guild merchandise.

Q. Do you know Joseph Brown & Company, 498 Seventh Avenue, New York City, N. Y.? A. No, I do not.

Q. Do you know they make \$10.75 dresses? Did you ever hear of Harry Butler & Brother? A. No.

Q. Do you know they make \$10.75 dresses? A. No.

Q. Do you know that they stand ready, willing, and able to sell you splendid merchandise at that price in the New York market? A. I do not.

Q. You never heard of them? A. I never did.

4896

Q. You have never been in their showroom? A. I never have.

Q. Do you know Caron Brothers, Inc.? A. No.

Q. You never heard of that firm? A. No.

Q. You do not know that they make \$10.75 dresses?

Mr. Haycraft: I object to any further interrogation as to this company. He says he has never heard of them.

The Witness: I have never used that source of supply.

*By Mr. Weisman.*

Q. I did not ask you whether you had used them. I am trying to find out whether you know them.

Mr. Weisman: I must object to this constant motioning and hovering over counsel by Mr. Freeman. It is very annoying, and it certainly seems to me to be quite irregular.

Mr. Haycraft: Well, that is an improper statement. I move that it be stricken physically from the record.

Examiner Bennett: Gentlemen, let us get along.

*By Mr. Weisman.*

4898

Q. What about Cartwright Gowns, Inc.? A. Never heard of them.

Q. What about Albert R. Casals? A. I never heard of them.

Q. What about Cecele Dance Frocks, Inc.? A. I know them.

Q. What priced merchandise do they generally handle?  
A. \$10-75.

Q. Do you do business with them?

Mr. Haycraft: I object.

Examiner Bennett: Sustained.

Mr. Weisman: Exception. I make this offer of proof that if the witness had been enabled to answer he would have said that they do, and I would have then been in a position to prove that they can get an adequate amount of dresses from Cecele Frocks, and that they compare favorably with dresses that they bought from Guild members.

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Mr. Haycraft: Move to strike that motion to proof, your Honor, as entirely improper.

4900

*Kenneth March—For Commission—Cross.*

Examiner Bennett: No. I think I will let it stand under the circumstances. We have a rather peculiar situation here.

The Witness: We have only been able to get merchandise from them since they resigned from the Guild.

*By Mr. Weisman.*

Q. And since the last few months you have not had the slightest trouble in getting merchandise from them, then, have you? A. No.

Q. Have you? A. No.

4901

Q. What priced merchandise do you get from them?

Mr. Haycraft: I object.

Mr. Freeman: I object to that. The witness should not answer that.

Examiner Bennett: The witness has volunteered the information. If he volunteers the information of course I cannot shut it off after that. You may answer.

*By Mr. Weisman.*

Q. What priced merchandise do they make; the Court has directed that you may answer that question, anyhow?

A. \$10.75 dresses.

4902

Q. Do you find that they sell you good, seasonable merchandise when you place your order with them? A. Yes, if they have the things that I want from them, yes.

Q. That such merchandise that you purchase from them compares favorably in consumer acceptance thereof with such merchandise you were previously able to get from other sources, including Guild resources?

Mr. Freeman: I object.

Examiner Bennett: I am not going to protect him in that. He has volunteered that information.

I do not see where I should protect him in that if he volunteers the information.

*By Mr. Weisman.*

Q. The Court says ~~you~~ may answer. A. I understand that Mr. Bennett; says I do not have to give my impression.

Examiner Bennett: You had better curb your tongue, then, and not volunteer information.

Mr. Weisman: I insist that he be allowed to answer the question.

Mr. Freeman: Mr. Examiner, I object to the witness answering that question.

Examiner Bennett: I will let him answer that.

Mr. Freeman: Mr. Examiner, may I now be permitted to instruct the witness as to his present sources of supply, the prices, and comparison of the goods purchased from the sources of supply with other sources, he is not required to answer.

Mr. Weisman: I want the record to clearly note this extraordinary action on the part of a counsel has nothing in the world to do with this case, coming in here and instructing the witness as to the manner, scope, and nature of his testimony, and indicating very clearly the way he should turn his testimony. The high degree of impropriety that is indicated in conduct of this character scarcely needs comment upon my part, but I do feel that it should be called to the attention of the Commission.

Examiner Bennett: The record speaks for itself. He does not have to give invidious comparisons. If he has ordinary common sense he will not do it.

Mr. Freeman: I object. I thought he so understood.

Mr. Weisman: Oh, you thought that you trained him a little better.

Mr. Haycraft: I object to that.

4906

*Kenneth March—For Commission—Cross.**By Mr. Weisman.*

Q. Will you answer the question, please? A. May I have the question, please.

Q. (Question read as follows: "Q. That such merchandise that you purchase from them compares favorably in consumer acceptance thereof with such merchandise you were previously able to get from other sources, including Guild resources?") A. I would rather not make any comparison.

*By Mr. Weisman.*

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Q. The Court has directed you to answer that question, anyhow.

Examiner Bennett: He does not have to answer. That is his answer. If it is not satisfactory, why, I do not know what can be done about it.

Mr. Weisman: I respectfully except.

Examiner Bennett: I am not going to compel him to make a comparison.

Mr. Weisman: Now, I respectfully move that all of the testimony in this case wherein it is claimed that the firm of Strawbridge & Clothier could not obtain merchandise of a similar kind and character to that purchased from the Guild be stricken from the record.

4908

Examiner Bennett: Denied.

Mr. Weisman: Exception. It is perfectly obvious upon this record that I am being denied any opportunity to show that they could, in fact, purchase such merchandise in greater quantity than they could possibly buy it in the normal course of their business. To deny me that right is to virtually make this a star chamber proceeding in which we are simply dragged in here and led to slaughter, and I cannot make my objection too strenuous to it.



Examiner Bennett: You have your exception on the record. You are protected.

Mr. Weisman: I only hope that I am.

*By Mr. Weisman.*

Q. Do you know Dalton Frocks, Inc., 1372 Broadway, New York City, N. Y.? A. No, sir.

Q. Did you ever hear of them? A. No, sir.

Q. Do you not know that in February, 1936, that they were engaged in the wholesale manufacture and sale of ladies' ready-to-wear? A. I—

Mr. Haycraft: That is objected to. He said that he did not know them at all, and he never heard of them.

4910

Mr. Weisman: Mr. Haycraft's extraordinary solicitation for his witness needs no further comment than its mere appearance upon the record, if your Honor please. I do not think I ever saw a case conducted wherein counsel were so solicitous about these babes in arm that they place on the witness stand.

Mr. Haycraft: No such thing.

Examiner Bennett: The objection is sustained.

Mr. Weisman: Exception, and I offer to prove that he did know that, that which I am foreclosed from permitting him to show.

Mr. Haycraft: You do not know any such thing.

4911

Mr. Weisman: How do you know what I know?

The old mind reader at work again.

*By Mr. Weisman.*

Q. It was in December—in February, or thereabouts, 1936, did you ever know of the firm of Samuel Davidson, Inc.? A. No, sir.

Q. Do you know of them now? A. No, sir.

4912

*Kenneth March—For Commission—Cross.*

Q. Did you ever hear that they were engaged in the business of the wholesale manufacture and sale of dresses at \$10.75? A. No, sir.

Mr. Haycraft: That is objected to.

Mr. Freeman: I object to that, if your Honor please.

Examiner Bennett: Sustained.

Mr. Weisman: Exception. Your Honor understands that when I am foreclosed on these questions I am, of course, foreclosed upon questions which would bear upon that particular, and which in deference to your Honor I will not ask immediately following that.

4913

Examiner Bennett: Yes, I understand.

*By Mr. Weisman.*

Q. Did you ever, on or about February 1, 1936, and at any time thereafter, know of the firm of Donnaline Dress Company, 1400 Broadway? A. No, sir.

Q. Did you ever hear of the firm of Dresden Dress Company, Inc.? A. Yes, sir.

Q. Where did you hear of that firm, and when? A. In January I heard of it.

Q. Have you since February 1, 1936, or since the claimed red carding by the Guild of your store, done business with the Dresden Dress Company?

4914

Mr. Haycraft: I object.

Examiner Bennett: Sustained.

Mr. Weisman: Exception. I offer to prove that had I been permitted to ask this witness this question and he permitted to answer it, he would have stated that he did do business with them since that time.



*By Mr. Weisman.*

Q. Have you ever received any merchandise from the Dresden Dress Company, Inc.?

Mr. Haycraft: Same objection.

Examiner Bennett: Sustained.

Mr. Weisman: Exception. I offer to prove that if he had been permitted to answer he would have stated that he had received certain merchandise.

Mr. Haycraft: As a matter of fact, was not the Dresden Dress Company a member of the Guild in February?

Mr. Weisman: Not to my knowledge.

Mr. Haycraft: I think it was.

Mr. Weisman: Will you take the stand and testify as a witness in this case?

Mr. Haycraft: Certainly not.

Mr. Weisman: Then I object to putting in the record your opinions as to what you know upon which I have no opportunity to cross-examine him. You asked me if they were and I gave you my information in answer to it, and then you are trying to testify. I think that is highly improper, your Honor. It is just typical of the whole transaction involved in this case.

*By Mr. Weisman.*

Q. In your opinion, in what respect is the merchandise that is sold and delivered by the Dresden Dress Company, Inc., inferior to that which you got from Guild houses?

Mr. Freeman: I object to that. Now I really object to that.

Mr. Haycraft: I object to that, if your Honor please. Counsel has no right to ask a question like that.

4918

*Kenneth March—For Commission—Cross.*

Mr. Weisman: It is coming to a pretty pass when counsel for the Commission is going to tell me even the question that I may ask.

Examiner Bennett: Sustained.

Mr. Weisman: Exception, and I offer to prove that if the witness had been allowed to answer he would have stated that in no respect was it inferior to that which he purchased from Guild houses.

*By Mr. Weisman.*

4919

Q. Have you ever found that the merchandise that you purchased from the Dresden Dress Company, Inc., was inferior in quality or in type or in style or in quality or in consumer acceptance to that which you were enabled to buy from Fashion Originators Guild of America members when you did buy from them?

Mr. Freeman: I object to that, Mr. Examiner.

Mr. Haycraft: I object to that. No foundation has been laid for it.

Examiner Bennett: Sustained.

Mr. Weisman: Exception, and offer to prove that the witness' answer would have been that in every respect the merchandise was equal to that, or better, for that matter, to that purchased from members of the Guild.

4920

Mr. Haycraft: I move to strike that out, if your Honor please, as not a proper offer to prove.

Examiner Bennett: No, I think I will let it stand. It is in the record physically, anyway.

*By Mr. Weisman.*

Q. Do you know the Ebon Manufacturing Company, Inc., 498 Broadway, New York—498 Seventh Avenue, it is? A. No.

Q. Did you ever know of them on February 1, 1936?

Mr. Freeman: I object.

Mr. Haycraft: I object.

Examiner Bennett: Overruled.

A. No, sir.

*By Mr. Weisman.*

Q. Did you ever know of, or did you ever hear of Edelman— A. No, never heard of a firm with a name like that.

Q. You answered that very promptly before I ever got the full name out. Did counsel indicate to you to say no? A. (No answer heard.)

Q. Did you ever hear of the Encore Dresses? A. I have.

Q. Did you prior to February 1, 1936, do business with them? A. I would not know.

Q. Have you learned of them since February 1, 1936? A. I have.

Q. Since you have learned of them did you also learn what priced dresses they make and sell? A. Yes.

Q. What priced dress do they make and sell? A. \$10.75.

Q. Have you, since February 1, 1936, found that Encore Dresses, Inc., were at all times ready, willing, and able to sell you such merchandise as you desired to purchase from them? A. I have.

Q. Have you, in fact, since February 1, 1936, purchased merchandise from Encore Dresses, Inc.?

Mr. Freeman: I object to that, your Honor. I object. That is not a proper question.

Mr. Haycraft: I object.

Mr. Weisman: I suppose your Honor is going to sustain that in spite of anything I might say.

Examiner Bennett: Yes, in view of the statement by counsel the objection is sustained.

Mr. Weisman: Exception. I make the offer to prove that had the witness been permitted to

4924

*Kenneth March—For Commission—Cross.*

answer he would have answered that they have merchandise from them and in substantial quantity.

Mr. Haycraft: Move to strike that as not proper offer to prove.

Examiner Bennett: No, I think I will allow it to stand.

*By Mr. Weisman.*

Q. Have you found that the merchandise that you have purchased from Encore Dresses, Inc., is, in any respect, inferior to that which you could have purchased from members of the Guild at the same price?

4925

Mr. Haycraft: I object.

Mr. Freeman: I object to that, Mr. Examiner.

Examiner Bennett: Sustained.

Mr. Weisman: I except. I now offer to prove that if the witness had been permitted to answer he would have answered that it was not inferior in any respect.

*By Mr. Weisman.*

Q. Did you ever hear of Estell Frocks, 101 West Thirty-seventh? A. No.

Q. Did you ever hear of the Everglad Blouse & Dresses? A. No.

4926

Q. Did you ever hear of the F. E. D. Dress Company, 1400 Broadway? A. No, sir.

Q. Did you ever hear of the Fashion Dress Company, 525 Seventh Avenue? A. No, sir.

Q. You are certain of that? A. Yes, sir.

Q. I take it with regard to all these houses whom you say you never heard of, you must have, and must be now, of necessity, unaware of the prices at which they sell their merchandise; is that so? A. If I have never heard of them I do not know at what price they sell for.

Q. I am trying to shorten this record as much as I can. Did you ever hear of the Fashion-Craft Dresses, Inc.? A. Where are they located?

Q. 530 Seventh Avenue. A. Yes.

Q. You know of them? A. Yes.

Q. How long have you known of them? A. Since January, 1936.

Q. I take it, then, that they are a resource which prior to January, Department 335 did not do business with?

Mr. Freeman: I object.

Mr. Haycraft: I object.

Examiner Bennett: Sustained.

Mr. Weisman: Exemption, and I offer to prove 4928 that he would have answered that in the affirmative; that they did not do business with them prior to January.

*By Mr. Weisman.*

Q. What dresses do Fashion-Craft Dresses, Inc., handle or sell? A. \$10.75 and up.

Q. Do they handle the type of dresses that you sell in your Departments Nos. 338 and 358? A. They do.

Q. Have you found them at all times ready, willing, and able to sell you all the dresses that you are willing to purchase from them? A. Not me.

Q. Under one acting under your instructions or directions? A. No, sir.

Q. Or acting for you or for Strawbridge & Clothier? A. No, sir.

Q. When you said, "Not me" what did you mean? A. They do not sell my department.

Q. Do you mean that they do not sell your department because your department does not want to buy from them; is that what you mean, or what do you mean by that? A. They do sell—they manufacture a woman's dress.

4930

*Kenneth March—For Commission—Cross.*

Q. Does not Department 338 handle women's dresses?  
 A. They do.

Q. Then your answer is that they manufacture women's dresses—how is your answer that they manufacture women's dresses explanatory of your statement that they do not sell that department? A. They sell—they sell another department in our store.

Q. What department?

Mr. Freeman: I must object to that.

Mr. Haycraft: I object.

Examiner Bennett. ~~Sustained.~~

4931

Mr. Weisman: Exception, and I offer to prove that the witness would have stated such department, which would have been a piece of information vitally necessary to the proper defense of this case on the part of the respondents.

*By Mr. Weisman.*

Q. Have you seen the merchandise that they handle or purchase, or produce, I should say? A. Not recently.

Q. What do you mean by "not recently"? A. Not since February.

Q. Did you ever hear of the Fashion Wear Dress Company? A. Where at?

Q. 1400 Broadway? A. No, I have not.

4932

Q. Did you ever hear of Furst-Greenman Company, Inc., 1400 Broadway? A. I have heard of them, but I do not know what they make, or—I have just heard of them. I have heard the name mentioned in the market.

Q. You know that they are a regularly producing house, do you not; a rather large one? A. No.

Q. Don't you know that they are a regular Broadway house? A. No.

Q. Is not Furst-Greenman Company, Inc., 1400 Broadway, a large producer of \$10.75 dresses? A. I would not know that.



Q. How did you hear about it? A. I have heard people speak of the name. When you mentioned the name it brings back the recollection of having heard of them somewhere.

Q. Did you ever hear of Ginsburg & Abelson, Inc.? A. No.

Q. Do you know that house, or did you know that house on February 1, 1936, when you became buyer for this department? A. No.

Q. Do you know Goldstein & Entin, Inc., 1410 Broadway? A. No, sir.

Q. Never heard of them since February 1, 1936? A. No, sir.

Q. Did you ever hear of Golf Dress Company, Inc.? A. I have heard of them.

Q. Did you ever hear that they were in the business of making dresses at \$10.75 and up? A. Not the type of dresses that I buy.

Q. What type of dresses did you hear they make? A. Sport dresses.

Q. Did you not also hear that they made tailored suits of linens and woolens? A. When I said sports dresses, I had in mind tailored dresses.

Q. Did you ever hear of the Greensteins Frocks, Inc.? A. No.

Q. Did you ever hear of Greenwald Friedman Corporation? A. No, sir; I never heard of that name.

Q. Did you ever hear of Gross-Sydney, Inc.? A. No, sir.

Q. Did you ever hear of Harris & Stone, Inc.? A. No, sir.

Q. Did you ever hear of Harston Frocks, 525 7th Avenue? A. No, sir.

Q. Did you ever hear of Heimlich? A. No, sir.

Q. Did you ever hear of Irma Dress Company, Inc.? A. No, sir.

4936

*Kenneth March--For Commission--Cross.*

Q. Did you ever hear of J. H. Costume Company, Inc.?

A. No, sir.

Q. Did you ever hear of George Jacobson, 1400 Broadway? A. No.

Q. Did you ever hear of the Jerry Dress Company, Inc.?

A. No, sir.

Q. Did you ever hear of Jescove Frocks of 1400 Broadway? A. No, sir.

Q. Did you ever hear of Jo-Jo Dress Company, Inc.?

A. No, sir.

Q. Are you sure of that last one? A. That is right. I am sure.

4937

Q. You never heard of that? A. No, sir.

Q. Did you ever hear of Julmar Frocks, Inc.? A. No, sir.

Q. Did you ever hear of Junior Town Frocks at 1400 Broadway? A. I don't buy junior dresses, so I wouldn't hear about it.

Q. It may be they make dresses other than junior dresses. In any event— A. I don't know.

Q. You don't know them? A. No, sir.

Q. Did you ever hear of the Justrite Dress Company?

A. No, sir.

Q. Did you ever hear of Milton Kohn-Schlüssel? A. No, sir.

Q. Did you ever hear of Konette Frocks of 101 West 37th Street? A. No, sir.

4938

Q. Did you ever hear of Ladycraft Dresses, Inc.? I have.

Q. When did you hear of them? A. January, 1936.

Q. Prior to that you hadn't heard of them? A. I wasn't buying that price prior to that.

Q. I didn't ask you that. That isn't responsive to my question. I asked you whether prior to that you had ever heard of them. A. I had not.

Q. What price to they make and sell? A. \$10.75 and up.



Q. Do they make and sell the type of dress that you handled in your Departments 338 or 358? A. I wouldn't like to make a comparison there.

Q. I didn't ask you to make a comparison.

Examiner Bennett: It is perfectly all right. Answer it.

Mr. Haycraft: Read the question to him.

Q. (The question was read.) A. They do have.

Q. Do you find that they are ready, willing and able to sell you all the dresses that you are willing to give them on order?

Mr. Haycraft: That is objected to, the form of the question, Mr. Examiner, assuming that he wasn't willing to give any on order, which is not the fact.

Examiner Bennett: I sustain the objection.

By Mr. Weisman.

Q. Do you find that Ladycraft Dresses, Inc., is at all times willing to sell and deliver to you such dresses as you desire to purchase?

Mr. Haycraft: Objected to on the same grounds. There is nothing to show that he desires to purchase them.

Examiner Bennett: Sustained.

Mr. Weisman: Exception. May I ask the Examiner with all due humility on what basis this objection is sustained?

Examiner Bennett: I think it is an indirect way of doing what has been ruled that you shall not do on a direct question.

Mr. Weisman: Respectfully—

Examiner Bennett: I think it is a matter that has been contended over as to whether they were actually used as a source of supply.

4942

*Kenneth March—For Commission—Cross.**By Mr. Weisman.*

Q. Well, has Ladycraft Dresses, Inc., at any time refused to sell you such dresses as you desired to purchase?

Mr. Haycraft: I object to the form of the question, "that you desired to purchase," I object to the language which brings into this whole matter the question that was ruled on.

Examiner Bennett: I assume they were available supplies. They are not a Guild house; are they?

4943

Mr. Weisman: No. I am trying to show that there was plenty of available sources.

Examiner Bennett: Well, you are showing it.

Mr. Weisman: All right. I will have an exception and go to the next.

Examiner Bennett: Showing it with a plethora of wealth.

Mr. Weisman: Thank you.

Examiner Bennett: That is quite amazing.

*By Mr. Weisman.*

Q. Did you ever hear of the Lanbry Company, 1400 Broadway? A. What is the name, please?

Q. L-a-n-b-r-y? A. No, sir.

4944

Q. Did you ever hear of Le Claire Costumes, Inc., at 525 Seventh Avenue? A. No, sir.

Q. Did you ever hear of Herbert Lightsone? A. No, sir.

Q. Did you ever hear of B. & J. Lipman, Inc.? A. Yes, sir.

Q. When did you hear of them? A. That is a new house. I don't know when they started. It was after January 1st.

Q. What priced merchandise do they make? A. \$10.75 and up.

Q. Do they make the type of merchandise that you generally use in your Departments 338 and 358?

Examiner Bennett: Do they? If you know.

A. I have only purchased a few dresses from them.

Examiner Bennett: You don't have to tell about your purchases.

Mr. Weisman: Ha, ha, ha, ha.

Examiner Bennett: You were asked a question as to the kind of merchandise.

*By Mr. Weisman.*

Q. For what department did you purchase those dresses? A. 358.

Q. Now, if you had been willing to purchase more, would they have been—were they willing to sell them to you?

Mr. Haycraft: That is objected to.

Mr. Freeman: Now—

Examiner Bennett: Well, I will sustain the objection.

*By Mr. Weisman.*

Q. When you purchased these dresses, did you purchase them yourself? A. I did.

Q. Did you visit their showroom? A. Yes, sir.

Q. Did you see their stock? A. Not their stock, no.

Q. Did you see their line? A. That is right.

Q. How many dresses were there in their line? A. I have no idea.

Q. What is your best recollection? A. I was only interested in one group of their dresses.

Q. Did they try to interest you in the other groups?

A. They knew I didn't purchase the other groups.

4948

*Kenneth March—For Commission—Cross.*

Q. No. I am not asking you that. I am asking you did they seek to interest you in the other groups? A. No, sir.

Q. Did they at any time seek to have you place an order larger than you actually did place?

Mr. Taylor: Ha, ha, ha.

A. I think they all tried to do that.

Mr. Taylor: Ha, ha.

*By Mr. Weisman.*

4949

Q. Everybody that you do business with tries to sell you as much as they possibly can and you seek to take only that which you need; is that it? A. That is correct.

Q. So that when you go to these various houses, your trouble has been, as with most buyers, in keeping down the enthusiasm of the seller to ship you more merchandise than you really need; is that so? A. That is correct.

Q. With Lucile Frocks, have you ever heard of Lucile Frocks? A. The address, please?

Q. 491 Seventh Avenue. A. I have.

Q. When did you hear of them? A. My best recollection is somewhere in March, 1936.

Q. How did you come to hear of them?

Mr. Haycraft: That is objected to.

Examiner Bennett: Objected to?

4950

Mr. Haycraft: Yes.

Examiner Bennett: I will sustain the objection.

Mr. Weisman: I submit it is always competent to show how the buyer—how he found out about these people.

Examiner Bennett: I don't see what it amounts to. I don't see that it is of any help. He did find out. What does it matter how he did it?

Mr. Weisman: Well, all right. I respectfully except.

Examiner Bennett: All right.

*By Mr. Weisman.*

Q. What type of merchandise do they make? A. They make different types of merchandise.

Q. Well, tell us about the different types. A. What ever is fashionable at the time they make them.

Q. Well, aren't all of these dress houses engaged in making fashionable merchandise? A. Along certain types. A house usually sticks along a certain type.

Q. What do you mean when you said Lucile makes different types? A. Well, he makes costume suits or wool dresses or silk dresses, anything that is in fashion at that time.

Q. Does he make the type of dresses that are generally handled in Departments 338 and 358? A. Yes. 4952

Q. Have you found that his merchandise is in anywise inferior to such merchandise as you could purchase from members of the Guild at the same price?

Mr. Haycraft: That is objected to.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

*By Mr. Weisman.*

Q. Have you since May 1, 1936, placed orders for merchandise with Lucile Frocks?

Mr. Haycraft: I object.

Mr. Weisman: Exception. 4953

*By Mr. Weisman.*

Q. Have you received merchandise from Lucile Frocks?

Mr. Haycraft: Same objection.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

4954

*Kenneth March—For Commission—Cross.**By Mr. Weisman.*

Q. Have you at all times found that Lucile Frocks were ready and willing to sell you such merchandise as you indicated you desired to purchase from them?

Mr. Haycraft: That is objected to.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

*By Mr. Weisman.*

Q. Now, do you know Mahler & Michaels, Inc., 1400 Broadway? A. No, sir.

4955

Q. Do you know Mattie Gross-Lucille? A. I do.

Q. 1375 Seventh Avenue—I mean, Broadway? A. That is right.

Q. It is a rather well-known house; are they not? A. I couldn't say.

Q. Don't you know who Mattie Gross is? A. I never met him, no.

Q. She happens to be a woman. Did you ever hear that she was a very well-known designer? Don't you know that in your business? A. No, sir.

Q. Did you ever know that the Lucille of that firm was the Lucille Le Roy, a well-known designer? A. No, sir.

Q. Did you ever hear that that was one of the large volume houses? A. No, sir.

4956

Q. When did you hear of them? A. In March, I believe. It was 1936.

Q. Prior to March, 1936, do you know whether or not they sold any merchandise to your store?

Mr. Haycraft: Objected to.

Examiner Bennett: Sustained.

Mr. Weisman: What, Judge?

Examiner Bennett: Sustained.

Mr. Weisman: Well, I had assumed that the purpose of those objections was with regard to people after February that did business with them.



Mr. Haycraft: You can get that information by a process of elimination. That is why I am objecting to it.

Examiner Bennett: I am not going to let things be done indirectly which are not permitted directly. While you have a great deal of ingenuity in doing that, I am afraid that you won't succeed; that is, unless the attorney goes to sleep.

*By Mr. Weisman.*

Q. Did you find that Mattie-Gross-Lucille Le Roy, Inc., made such type of merchandise as was generally handled in Departments 338 and 358? A. Yes.

4958

Q. Did you find that they were at all times ready to sell you such merchandise as you desired to buy from them for those departments?

Mr. Haycraft: Objected to.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

*By Mr. Weisman.*

Q. Did you in fact since February 1, 1936, purchase and acquire for Departments 338 and 358 such of the merchandise of Mattie Gross-Lucille Le Roy, Inc., that you desired to purchase?

Mr. Haycraft: Objected to.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

4959

*By Mr. Weisman.*

Q. Have you ever heard of Miriam Modes, Inc.? A. No, sir.

Q. Have you ever heard of Mirkin Friedman-Bucholz, Inc., 1406 Broadway? A. Yes, sir.

4960

*Kenneth March—For Commission—Cross.*

Q. Are they engaged in making the same—such types of merchandise as you generally use in Departments 338 and 358? A. Yes, sir.

Q. When did you first hear of them? A. January, 1936.

Q. Now, going back to Mattie Gross-Lucille Le Roy, Inc., for a moment. Did you find that the merchandise that you bought from them was in any respects, or the merchandise offered for sale by them, were in any respect inferior to that offered by members of the Fashion Originators Guild at the same price?

Mr. Haycraft: Objected to.

Examiner Bennett: Sustained.

4961

Mr. Weisman: Exception.

(There was a discussion off the record.)

Mr. Weisman: Now, at the suggestion of Mr. Freeman, and the Examiner, I wish to make this statement: That at this time I am desisting from further examination along that line, that if I were to continue I could continue with approximately—I want to get it right. May I have a moment's time? We have analyzed it, Judge.

Examiner Bennett: All right.

Mr. Weisman: That at \$10.75 there are approximately 2,200 such sources of supply which I would have continued to read from.

Examiner Bennett: All right.

4962

Mr. Haycraft: \$10.75?

Mr. Weisman: No, at the \$6.75 and up. I asked him that.

Examiner Bennett: All right.

*By Mr. Weisman.*

Q. Yesterday I asked you under what circumstances the A.M.C. buys for your store and you said they buy for you at such times as you are not able to be in the market and you are in a hurry. You remember that? A. Yes, sir.

Q. Are those the only circumstances known to you under which the A.M.C. does the purchasing for you? A. There is one other operation that they purchase for us.

Q. What is that other operation?

Mr. Haycraft: That is objected to.

Mr. Weisman: I submit it is vital.

Examiner Bennett: Well, I am going to let him answer, if he knows.

*By Mr. Weisman.*

Q. The Court says you shall answer, if you know. A. That is the Dean-Taylor operation.

Q. We don't know what that means. Rather, the Court doesn't. Tell us about it. A. The A.M.C. buyers in New York select certain styles that are confined to A.M.C. stores. That is the only thing they purchase for us. We receive one or two styles a month from them.

Q. I see. Now, is that all? A. That is all.

Q. And these styles, no other store can purchase them that isn't a member of the A.M.C.? They are only confined to your store; is that so?

Mr. Haycraft: That is objected to.

Examiner Bennett: If he knows. If you don't know, please don't answer.

*By Mr. Weisman.*

Q. Do you know that?

Examiner Bennett: Unless you know. Unless you know don't give us that information.

The Witness: I beg your pardon?

Examiner Bennett: Do you know? If you don't know, don't try to tell about it.

A. I am not positive.

Examiner Bennett: All right.

4966

*Kenneth March—For Commission—Cross.**By Mr. Weisman.*

Q. Well, aside from being positive, what is your general knowledge?

Mr. Haycraft: That is objected to.

Examiner Bennett: I will sustain an objection.

*By Mr. Weisman.*

Q. Do you know the understanding upon which the A.M.C. purchases these garments from the manufacturer?

A. No, I don't.

4967

Q. Don't you know that they purchase them on the agreement that no other retailer in the town or city where the A.M.C. store is located may have that particular style, don't you know that? A. No, sir.

Q. That is news to you? A. Yes, sir.

Q. What did you mean when you said that they purchased this one or two styles a month which is confined to an A.M.C. store, if you didn't mean just that? What do you mean by that answer? A. We have found cases where other stores in the same town did have the dress.

Q. The original or copies? A. The original.

Q. Did you feel that that was contrary to the arrangement that had been made when you bought it? A. I never bought it.

Q. When it was bought by your store.

4968

Mr. Haycraft: That is objected to.

Examiner Bennett: I don't think this man is an executive. I think this man is not such an executive as is qualified to answer that question. I sustain the objection.

Mr. Weisman: All right.

*By Mr. Weisman.*

Q. Do you know Miss Dean? A. Yes, I do.

Q. Who is Miss Dean? A. She is one of the A.M.C. representatives in New York.

Q. Is she the representative of the A.M.C. that makes up a list of what each of your stores will take each week and goes out and buys this merchandise in one group? A. Miss Dean doesn't handle my division.

Q. No. She handles the \$3.75—

Mr. Haycraft: Objected to.

Q. (Continuing) —doesn't she?

Mr. Haycraft: Objected to.

Q. (Continuing) And \$4.75.

Mr. Haycraft: I object.

Examiner Bennett: This witness doesn't seem to know anything about that. Let's not waste any time.

*By Mr. Weisman.*

Q. Weren't you the buyer in this department before February 1, 1936? A. That is right.

Q. And as such buyer didn't you learn that this—didn't you learn what Miss Dean did?

Mr. Haycraft: Objected to.

Examiner Bennett: Well, I will overrule the objection to that, if he knows.

*By Mr. Weisman.*

Q. The Court says you shall answer. A. Miss Dean never bought anything for Strawbridge & Clothier.

Q. Did she ever suggest to you that you pool your purchases with other members of the A.M.C.?

4972

*Kenneth March—For Commission—Cross.*

Mr. Haycraft: Objected to what she may have suggested.

*By Mr. Weisman.*

Q. Well, did you as a result of a suggestion or discussion with Miss Dean ever pool your purchases with any of the other seventeen or eighteen members of the A.M.C.?

A. We never pooled our purchases, no.

4973

Q. What did you do, and what did you mean when you emphasized the word "pool"? Did you buy together with them? A. No, sir. Miss Dean has suggested certain things to us and I have gone over at different times and bought them by myself, but never with any other store.

Q. You stated a moment ago that sometimes you found dresses in town which were the same as those that you had bought through this well-known Dean operation of the A.M.C. Do you remember saying that to me a minute ago?

A. Not the Dean operation.

Q. What did you call it? What did you call that operation?

Mr. Haycraft: Objected to.

Examiner Bennett: Sustained.

Mr. Weisman: Exception. Well, may I not ask him what he said to me two moments ago, Judge?

Mr. Haycraft: It has no probative value.

4974

Examiner Bennett: You may ask him anything you want. I am not curtailing you.

Mr. Weisman: There is no use of asking if your Honor says he can't answer.

*By Mr. Weisman.*

Q. You were the buyer for Department 491 prior to February 1, 1936, is that not so? A. That is correct.

Q. And you were the buyer there from July, 1933? A. That is correct.



Q. And your immediate superior is Mr. Taylor, the gentleman who has been present throughout your discussion, throughout your testimony? A. Up until January, up until the end of January, 19—

Q. While you were there as buyer for Department 491, Mr. Taylor was your superior? A. That is correct.

Q. When you were buying merchandise for this department, you visited the New York market from week to week? A. That is right.

Q. And you visited the market for the purpose of acquiring new and additional merchandise? A. Yes, sir.

Q. For use in that department? A. Yes, sir.

Q. While you were in charge of that department did you get all the merchandise that the department required? A. I did. .

4976

Q. Did you have any idea whatsoever of getting for Strawbridge & Clothier what Strawbridge & Clothier felt through you they ought to have? A. No, sir.

Q. At no time? A. No, sir.

Q. You are absolutely sure of that? A. That is right.

Q. Didn't have any limitations upon your ability to get merchandise? A. No, sir.

Q. Now, you stated that you first learned of the Guild in 1935? That fall; isn't that so? A. Yes.

Q. Hadn't you long before that pursuant to Mr. Taylor's instructions used the Guild stamp on all of your orders? A. That—

Q. No. Hadn't you? A. I don't know.

4977

Q. Didn't you place orders? A. Certainly.

Q. Well, didn't you on these orders that you placed put the Guild stamp? A. Our orders were printed with that stamp on.

Q. I don't ask whether or not they were printed, or whether it was placed by you. It had that stamp on it; didn't it? A. I don't know.

Q. Do you mean that you went out and placed orders and you didn't know what was the order? A. I didn't know what all of that wording was on the back of the order. Those copies were all printed up.

Q. Didn't you ever see it? A. I certainly have seen it.

Q. You mean that as buyer for this department for two and a half years you never knew that your orders contained a clause that the seller warranted the merchandise as being original and not copies of the Guild merchandise?

A. Of course I knew it, but I don't know when—

Q. Now, wait a minute. That is why I asked you. Didn't you know, furthermore, that during all of these two and a half to three years you reserved the right to return any merchandise that was sent to you and which turned out to be copies? A. I don't know when we started to use that warranty stamp.

Q. Well, let me ask if the stamp will refresh your recollection. A. I don't know the stamp—I don't know when we started to use it.

Q. A moment ago you said you didn't know. You said it was printed on there, didn't you? A. Yes.

Q. Well, now, we have it that you know the stamp. A. That is right.

Q. Well, don't you know as buyer of that department that in July, 1933, your store undertook to place that stamp on all of the orders? A. I don't know that, no.

Q. As a matter of fact, when you went out to purchase garments in the open market for Department 491, didn't you endeavor to purchase garments that were not copies of original Guild merchandise? A. I don't know whether they were copies of original Guild merchandise.

Q. No, no. I didn't ask you whether you knew. I asked you whether or not you endeavored to refrain from purchasing Guild copies of Guild merchandise? A. As much as I could, yes.

Q. When did you first start to refrain from purchasing as much as you could copies of Guild merchandise? A. When the Guild shoppers first started to make me return those copies.

Q. Do you mean to say that prior to the time that Guild shopper called your attention to the fact that you had copies you didn't care whether you had them or not, and you didn't care whether you bought them or not? A. I didn't know whether they were copies or not at the time I bought them.

Q. No, no. I didn't ask you whether you knew they were copies. That isn't important.

Examiner Bennett: He says he didn't know. How could he—

4982

Mr. Weisman: The man might not know factually whether a thing is a copy, Judge, but I am seeking to ascertain whether he sought to refrain from buying copies.

Examiner Bennett: Well, the operation of his mind—

Mr. Weisman: It isn't the operation of his mind; it is what he did.

*By Mr. Weisman.*

Q. Weren't you mistaken yesterday when you said that the first time you heard of the Guild was in the fall of 1935? Didn't you, as a matter of fact, learn through your superiors that your store was co-operating with the Guild as early as July, 1933? A. I don't recall knowing about the Guild in 1933.

4983

Q. You were buyer for that department in 1933? A. That is right.

Q. Didn't anybody in that store in 1933 tell you that the store had adopted its policy as being one which they had undertaken to refrain from knowingly dealing in

4984

*Kenneth March—For Commission—Cross.*

copies of Guild merchandise? A. They might have, but I don't remember.

Q. Well, if they told it to you, wasn't it part of your duties to see that that covenant or agreement or declaration was carried out? A. Yes, I suppose it was.

Q. If they told it to you, and it was your duty to carry it out, don't you remember whether or not you did carry out your store's promise which it was your duty to fulfill? A. I can't recall ever being told.

Q. What? A. I can't recall ever being told in 1933.

4985

Q. If you can't recall ever being told, then would you state that in 1933 you went out into the market and purchased goods for Department 401 without any regard to whether or not you were buying copies of Guild merchandise?

Mr. Haycraft: Objected to on the ground that it was already gone over.

Mr. Weisman: It hasn't been gone over.

Examiner Bennett: I will let him answer.

*By Mr. Weisman.*

Q. I said 401. I mean 491. Answer as to 491, please. A. I had no way of telling whether dresses were copies or not. I bought a very cheap dress and manufacturers weren't going to tell me that they were copies. I simply went in and bought them.

4986

Q. I am trying to find out from you whether at any time in 1933 you told manufacturers that you didn't want to buy copies of Guild merchandise? A. I can't recall telling manufacturers that.

Q. Do you recall that you didn't tell them that and that you bought it without regard to whether or not it was a copy? A. I didn't know it was a copy.

Q. Did you seek to inform yourself as to whether or not it was a copy? A. There is no way that I could inform

myself. I didn't—I don't know anything about the better dresses—I didn't know anything about better dresses at that time.

Q. Now, coming to 1934, have you any recollection as to whether or not during the year 1934 there was affixed as part of the orders you had printed on it the stamp? In other words, didn't you have in words or substance that the seller warranted that the goods were not copies of Guild merchandise and that you reserved the right to return the merchandise if it turned out to be copies of Guild merchandise? Have you any recollection of using that stamp during the year 19— A. No, I haven't.

Q. 1933? That warranty— A. No, I haven't.

4988

Q. In other words, as buyer of Department 491, it is your best recollection that Strawbridge & Clothier did not place those words upon their orders during the year 1934? A. I don't know.

Q. Well, as buyer, wasn't it your duty to know? A. I don't think so.

Q. Let's come down to 1935. Do you remember whether or not they were on your orders in 1935? A. I believe they were.

Q. When did you think in 1935 you first commenced to use that stamp on your orders? A. I don't know, Mr. Weisman, when we first used them.

Q. Was it early? A. I can't remember when we first started to use it. I knew that we were using it, but I couldn't tell you the date.

4989

Q. How long were you using it? A. I have no idea.

Q. When you go out in the market you take orders with you, don't you, your order blanks? A. That is right.

Q. And on these order blanks you place your orders? A. That is right.

Q. And on these order blanks are the terms of the purchase and the amount of the purchase, isn't that so? A. That is right.

4990

*Kenneth March—For Commission—Cross.*

Q. Now, on the orders that you placed for this department, during all of this period, do you remember when was the first time the words—

Mr. Weisman: I am now reading from Respondents' Exhibit No. 20, which comes from Strawbridge & Clothier.

4991

Q. —“This order is placed upon the seller's warranty that the above garments are not copies of styles originated by members of the Fashion Originators Guild of America, Inc. The purchaser reserves the right to return any merchandise which is not as warranted”? A. I don't remember.

Q. You remember it was printed on the order? You stated it was not stamped. A. It was printed. It was printed first and stamped later.

Q. In the beginning you had it stamped? A. Stamped and later on we had to—

Q. Well, now, when was it stamped?

Mr. Haycraft: Let him finish his answer. Later on it was what?

Mr. Weisman: It was printed. He said that.

Mr. Haycraft: Let him say so.

Mr. Weisman: We all heard it except you.

Mr. Haycraft: Did the reporter get it?

4992

The Reporter (reading): “A. Stamped and later on we had to—”

Mr. Weisman: Had it printed. All right.

*By Mr. Weisman.*

Q. Take a look at this and see if this refreshes your recollection (showing the witness Respondents' Exhibit 20).

Mr. Haycraft: I object to that, Mr. Examiner. He knows what the stamp is and has said so, al-



though he can't recall when it was first put on there. It is not going to help him refresh his recollection by looking at it.

Mr. Weisman: How do you know it is not going to refresh his recollection? Are you going to read his mind like your witnesses have been trying to do?

*By Mr. Weisman.*

Q. Have you looked at that? A. Yes.

Q. Now, looking at that, has that refreshed your recollection as to when you used the stamp and when it was printed on the order? A. It has not.

4994

Examiner Bennett: We will have a recess of ten minutes.

(A short recess was taken.)

Mr. Weisman: Have you the last question?

(The last question and answer was read.)

*By Mr. Weisman.*

Q. This Department 491, what type of department was that? A. We called that the Economy Shop.

Q. Was that a ladies' ready-to-wear department? A. Strictly.

Q. What? A. Strictly a ladies' ready-to-wear department.

Q. Now, I call your attention to Commission's Exhibit 362 and ask you to read the last sentence in the exhibit reading "Furthermore, we propose to annex to all of our orders for ladies' ready-to-wear merchandise the following clause," and ask you whether or not that letter, its date and language I have read you refreshed your recollection as to when you commenced to use that warranty stamp?

4995

4996

Kenneth March—For Commission—Cross.

Mr. Haycraft: That is objected to, Mr. Examiner. The letter was not written by the witness.

Mr. Weisman: I didn't say it was written by him.

Examiner Bennett: Let's see whether it refreshes his recollection. Does it?

The Witness: It does not. I never saw this letter before.

*By Mr. Weisman.*

Q. Have you any idea of the total amount of merchandise that you purchased a year in dollar volume for Department 491 during the years that you were there?

Mr. Haycraft: That is objected to.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

*By Mr. Weisman.*

Q. What was the total amount of stock carried in Department 358, the average amount of stock during the year 1935?

Mr. Haycraft: I object to that. That is not what the witness said. He said at the time he took over, which was February 1, 1936.

Mr. Weisman: Did your Honor rule?

4998 Examiner Bennett: Sustained.

Mr. Weisman: Exception.

*By Mr. Weisman.*

Q. What was the total amount in that department in February, 1936? A. What time?

Q. February 1, 1936. A. I do not recall.

Q. What is your best recollection of it? A. I have no recollection.

Q. Do you think it was \$100,000? A. I will not guess.

Q. I do not want you to guess. You are in charge of this department; is that so? A. Yes, sir.

Q. It is your duty to purchase merchandise which shall be sold within a reasonable time? A. Yes, sir.

Q. What is that reasonable time? A. We have no set reasonable time.

Q. What is your average stock? A. I do not know.

Q. You do not know? A. No.

Q. You mean as buyer of this department you have no limitation with regard to the amount of stock on hand that you usually carry? A. I do not memorize those figures.

Q. What? A. I do not memorize those figures.

5000

Q. I did not ask you whether you memorized them or not. A. No?/

Q. I asked you what is your average stock.

Mr. Haycraft: He has already said that he did not know the figures.

Mr. Weisman: If your Honor please, I ask that counsel be stopped from making these constant interjections and coaching up his witness. This man does not need any help from counsel.

Mr. Haycraft: I am not making any interjections. I am going to make an objection when I feel it is necessary.

Mr. Weisman: If you would make an objection there would be no difficulty. You are not objecting. You are interjecting. If counsel does not know the difference, then I ask that he be informed.

5001

Examiner Bennett: Go ahead with your examination.

Mr. Haycraft: I have an objection pending.

Examiner Bennett: I overrule the objection.

A. I have no opinion.

5002

*Kenneth March—For Commission—Cross.*

Mr. Haycraft: The witness has said he had no recollection.

Mr. Freeman: I must object to that, your Honor.

Mr. Weisman: Here is Mr. Freeman again.

Examiner Bennett: The witness has said he had no recollection.

Mr. Weisman: If your Honor please, he may not have any recollection, but he may have an opinion. There is a difference between the two.

Examiner Bennett: Go ahead.

*By Mr. Weisman.*

5003

Q. As buyer of this department, what are your duties?

A. To purchase salable merchandise.

Q. To what degree can you buy all salable merchandise that is offered to you in the New York market or in any other market? A. If I can sell it.

Q. Well, have you any standard to guide yourself as to what you can sell? A. It depends upon the season.

Q. Well, now, let us see. In the spring season of 1936 how did you feel that you could have sold? A. There are so many things to take into consideration that I must take into consideration before I can answer that question.

Q. The spring season is past, is it? A. Yes.

Q. Yes? A. Yes, it is.

Q. You went in the market to buy merchandise, did you? A. That is right.

5004

Q. No doubt about that? A. No.

Q. Before you went out, did you have a budget? A. Yes.

Q. You did? A. Yes.

Q. From whom did you get this budget? A. From my superior.

Q. How coy you are. A. What is that?

Q. I say you are very coy. A. Possibly.

Q. No doubt of it. We will not quarrel on that. You say you got it from your superior? A. Yes.

Q. Do you know from what that budget was made up?

A. Yes, I do.

Q. You do know that? A. Yes.

Q. What was that budget made up from? A. Our expected sales.

Q. And from that budget of expected sales you would go out into the market and purchase such amounts of merchandise as you believed would satisfy those expected sales; is that so? A. That is correct.

Q. What relation has the amount of your sales to the amount of your budget, the purchases? A. I do not quite understand that question.

Q. In other words, if you expect to sell about \$1,000, or, let us say \$10,000, to get it in round figures of dollars of merchandise in the spring season at retail, how much merchandise will you buy to satisfy that demand? A. The equivalent of the amount you mentioned at cost.

5006

Q. I see. A. Yes.

Q. In other words, you only carry in your department sufficient merchandise to meet the amount of sales? A. Yes.

Q. You have no overage? A. No.

Q. No overage? A. No.

Q. In the spring season of 1935— A. What?

Q. I withdraw that. A. I beg your pardon?

Q. I have not asked you anything yet? A. Oh, no.

Q. In the spring season of 1935 what months constituted the spring season in 1936—we will take 1936 first? A. The spring season in 1936 constituted the months of March, April and May.

5007

Q. And May? A. Yes.

Q. When did you go out to place your orders for March, April and May? A. We buy from week to week.

Q. Week to week? A. Yes.

Q. You mean you do not buy in February for March, April and May? A. The last week in February we bought for the first week in May.

5008

*Kenneth March—For Commission—Cross.*

Q. In May? A. Yes.

Q. What amount of merchandise did you buy for your spring season? A. I cannot recall.

Q. Now, this is very extraordinary. If you cannot recall—what do you mean you cannot recall? A. I cannot recall the exact figures.

Q. I am not asking you if you recall the exact figures. A. No?

Q. No. I want to get from you an approximation? A. An approximation?

Q. Yes. Your best recollection as buyer in charge of this department. A. I have no recollection of how much I bought.

5009

Q. Have you any idea? A. I have not.

Q. No idea? A. No.

Q. When you say you have no idea you mean by that that you do not know whether in that department you bought \$100,000 worth of merchandise or \$10,000 worth of merchandise for the spring season? A. I do not know how much I bought.

Q. You do not know whether it is one or the other? A. That is right.

Q. Do you not know how many people you bought your merchandise from? A. I do not.

Q. No? A. No.

Q. Have you no idea? A. None.

Q. None at all? A. None.

5010

Q. Do you know whether or not you bought it from 100 manufacturers or 200 manufacturers? A. I would not be sure.

Q. Do you know whether or not—do you know what was your average purchase price, I will ask you that? A. You will ask me what?

Q. What was your average purchase price? A. I do not know.



Q. Would you know whether your average purchase price from the manufacturer was \$100 or \$1,000? A. I would not know.

Q. You do not know that, either? A. No.

Q. Do you know whether or not you sold more merchandise in Department 338 than you did in Department 358?

A. No. I do not know.

Q. Do you know whether or not you sold more merchandise in Department 338 in the first six months of this year than you sold in Department 491 during the same six months? A. No, I would not know.

Q. Have you any idea? A. No, sir.

Q. Is the same thing true with regard to Department 358? A. That is right.

Q. You were in charge of this Department No. 491 for two and one-half years? A. I was.

Q. You were? A. Yes.

Q. Notwithstanding that, do you state that you have no idea of the volume of business done in that department annually during the period that you were in charge of it? A. I do not know the exact amount of business.

Q. I do not want to know the exact amount of business. A. No?

Q. I want to know the approximate amount, an approximation. A. I do not know the approximate amount.

Q. You have no idea? A. No.

Q. No idea at all? A. No, indeed.

Q. Do you know whether or not that department did \$250,000 annually, or \$75,000 annually? A. I do not remember. I do not memorize those figures.

Q. I did not ask you whether you memorized those figures, did I? A. No.

Q. I asked you whether you knew whether or not that department did \$250,000 annually or \$75,000 annually, did I not? A. Yes.

Q. What is the answer to that? A. I do not know. I do not know at all.

5014

*Kenneth March—For Commission—Cross.*

Q. In other words, as far as you are concerned, either one or the other might equally be true; is that so? Can you not answer that? A. I do not understand. Will you repeat the question?

Q. I asked you whether, in so far as your knowledge is concerned, it could be either one or the other?

Mr. Haycraft: I object.

*By Mr. Weisman.*

Q. Is that so?

Mr. Haycraft: I object.

5015

Examiner Bennett: I will let you answer.

*By Mr. Weisman.*

Q. The Court says you may answer. A. That is right.

Q. That is right? A. Yes.

Q. Now, you have been in charge of these departments from February 1, 1936; is that not so? A. That is correct. That is, 338 and 358?

Q. That is right. A. Yes.

Q. Did you seek to purchase merchandise from the Renclair Dress? A. I did not seek. I was purchasing dresses from them.

Q. Did you continue to purchase them? A. No, sir. The numbers that I had from Renclair had slowed up. I did not bother to go back for any more.

5016

Q. Is that the only reason? A. That is the only reason.

Q. Did you not testify yesterday on your direct examination that the reason you did not go there was that they were members of the Guild? A. I did not.

Q. Well, let me read this testimony to you: "Q. Now, among the sources of supply were any manufacturers members of the Fashion Originators Guild of America during the time that you were buying for that department; that is, those that you contacted?" And was not your answer

"A. Yes, sir. One manufacturer. Q. Which one was that? A. Renclair Dress. Q. How do you spell that? A. Renclair, R-e-n-c-l-a-i-r." Did you—do you deny that you so testified yesterday? A. I do not.

Q. Then, which is true and correct, your testimony yesterday or your testimony here to-day?

Mr. Haycraft: There is no contradiction there at all.

Examiner Bennett: Where is the contradiction there?

Mr. Weisman: I should think the witness should be permitted to answer that.

*By Mr. Weisman.*

Q. Did not you say a moment ago to me that the Renclair Dress was not a member of the Guild? A. I do not so remember.

Q. You do not? A. I did not say that.

Q. Let us get this straight on the record now because I do not want any complaint about it. Did you not say to me a moment ago that the Renclair Dress was not a member of the Guild? A. Was not a member?

Q. Yes. A. I did not make any such statement to you.

Examiner Bennett: The record will show that. Go to something else. Let us not delay this thing too long.

*By Mr. Weisman.*

Q. Did you state that Renclair is a member of the Fashion Originators Guild or not now? A. They are not now.

Q. You never testified to that one way or the other? A. They are not now.

Q. Did you testify that they were at any time a member of the Fashion Originators Guild of America? A. I did.

5020

*Kenneth March—For Commission—Cross.*

Q. Do you so testify now? A. I do.

Q. When do you state that they were a member of the Fashion Originators Guild? A. I cannot give you the exact date. It was back in 1935 some time when the Guild took in the \$4.75. Renclair was one of the manufacturers that they accepted.

Q. That was what you had in mind when you testified yesterday? A. Yes, sir.

Q. It is? A. Yes.

Q. You knew your testimony was elicited by you for the purpose of showing that you were dealing with a Guild house? A. Yes, sir.

5021

Mr. Haycraft: That is not right. He does not know that. It is not so.

Mr. Weisman: It is very extraordinary that he says it is. The counsel for the Commission seems to be contradicting his own witness slightly.

Mr. Weisman: If that was not the purpose for it, then I move to strike it out.

Examiner Bennett: Denied.

Mr. Weisman: Exception.

*By Mr. Weisman.*

Q. As a matter of fact, who told you that Renclair was ever a member of the Fashion Originators Guild of America, Inc.? A. If I am not mistaken I saw it published in Women's Wear Daily.

5022

Q. That is the only knowledge that you had? A. Yes, sir.

Q. When did you see that published? A. Some time in 1935.

Q. How many times did you see it published? A. Once.

Q. Once? A. Once.

Q. That they were a source of supply of large size? A. What is that?

Q. Were they a large source of supply? A. Not to me.

Q. Were they a rather unimportant source of supply to you? A. That is right.

Q. Rather unimportant? A. Yes.

Q. Notwithstanding the fact that the same important—that this small unimportant source of supply—that this concern, we will get it now, was a small unimportant source of supply, you testified that some time in 1935 you recall that they appeared in Women's Wear as being a member of the Fashion Originators Guild of America; is that so? A. Yes, sir.

Q. True? A. True.

Q. And notwithstanding that you said that you cannot and do not have any recollection of the amount of business done with your department directly under your supervision? A. That is right.

Q. No idea at all? A. Not the slightest.

Q. Have you attempted to do business with Renclair since February 1, 1936? A. I am not buying that priced merchandise now. I do not have any reason to go in there.

Q. Do you know, as a matter of fact, that Renclair Dress was never a member of the Guild? A. No. I do not know that.

Q. Suppose I advised you now solemnly and honestly upon my own direct personal knowledge, will you then change your testimony on page 2658 of the record?

Mr. Haycraft: That is objected to.

Examiner Bennett: Sustained.

Mr. Weisman: Exception.

By Mr. Weisman.

Q. Are you a regular reader of the Women's Wear magazine? A. Yes, sir.

Q. Or paper? A. Yes, sir.

Q. You are interested in that department of the paper known as the dress section?

5026

Kenneth March—For Commission—Cross.

Mr. Haycraft: I object.

A. Yes.

Examiner Bennett: Overruled.

By Mr. Weisman.

Q. In your reading of the dress section do you see from time to time advertisements there in which various manufacturers advertise their products? A. Yes, sir.

Mr. Haycraft: I object.

Examiner Bennett: Overruled.

5027

By Mr. Weisman.

Q. Did you so read that paper and see it around February 1, 1936?

Mr. Haycraft: I object to the question as too indefinite. What did he see?

Examiner Bennett: I will sustain the objection if you are going back into the matter of sources of supply—

By Mr. Weisman.

Q. How long did you know Miss Joyce? A. From some time in 1935, when she first came in there.

Q. When did you first meet her? A. In my department.

5028

Q. Under what circumstances? A. Policing the department for copies.

Q. Did she come up to you and introduce herself to you? A. I asked her who she was the first time.

Q. What did she say? A. She said she represented the F.O.G.A.

Q. Meaning the Fashion Originators Guild of America?

A. I do not know; I suppose so.

Q. Did she show you any credentials? A. Simply a list of sketches that she had with her.



Q. Did she identify herself in any way? A. No, sir.

Q. Did you ask her for any identification? A. No, sir.

Q. Do you mean to say that as the head of this department you would let a woman come in on her own statement that she represented somebody, and you would let her go through your department?

Mr. Haycraft: I object to that question. There is no contention that Miss Joyce did not do it openly. That is generally conceded.

Mr. Weisman: I think, your Honor, that I am entitled to show the manner in which she came in there and conducted herself. Certainly, she was a contact there that should be developed.

5030

Examiner Bennett: What is the disagreement here? What are you trying to prove?

Mr. Weisman: I am trying to prove that Miss Joyce came into this department openly, notoriously, and without any effort at concealment at all, and that we sent letters to them advising them of her appearance there, and that the whole thing was thoroughly understood by all concerned.

Examiner Bennett: I thought that that had been conceded as to all of that.

Mr. Haycraft: Certainly it is all conceded.

Examiner Bennett: That she did not come in there surreptitiously, and so forth.

Mr. Haycraft: Yes. He did not say on direct examination that she came in there surreptitiously.

5031

Mr. Weisman: Very well. I will not ask the witness any questions about that if that is conceded by counsel for the Commission.

Mr. Haycraft: Of course it is.

Examiner Bennett: I thought that was perfectly clear. We are just taking up a lot of unnecessary time about that.

5032

*Kenneth March—For Commission—Cross.**By Mr. Weisman.*

Q. There is just one other question out that and then I will be through. A. Yes.

Q. You stated, I believe, that when Miss Joyce came in that pursuant to her request you would, from time to time, return certain merchandise; is that so? A. That is correct.

Q. That is correct? A. Yes.

Q. Did you so return it; you recall that, upon her statement that it was a copy? A. We did not go into it—

Q. What do you mean, that you required proof that it was a copy? A. Well, let me explain that.

5033 Q. Please do so. A. We did not go into that at first. We just looked at the sketches of the dress that she had, and if she said it was a copy then we would return it, at first.

Q. What did you do later? A. Then, I asked my superior and he said—

Q. What was that? A. Towards the latter end of the year every time Miss Joyce came in and said "I have a copy," I would refer her to my superior.

Q. Do not be so coy. Who was your superior? A. Mr. Charles Taylor.

Q. Mr. Charles Taylor? A. Yes.

Q. He is sitting here? A. Yes, sir.

5034 Q. And actively helping Mr. Haycraft and Mr. Freeman along when they need a boost? A. Well, I do not know what he is doing.

Mr. Haycraft: I object to that.

Examiner Bennett: Yes. Just go along with the examination.

*By Mr. Weisman.*

Q. What did he do? A. I do not know what was done. My hands were through with the thing when I turned her over to Mr. Taylor; I had nothing further to do with the matter.

Q. When did that procedure commence that you have referred to, of referring her to Mr. Taylor? A. In the latter part of 1935.

Q. So that in the latter part of 1935, and up to the time of the ceasing of your relations with the Fashion Originators Guild of America, as a result of any request that Miss Joyce would make on you, you say that you would merely refer her to Mr. Taylor? A. Yes, sir.

Q. Then she and Mr. Taylor would take such action as might be decided between the two of them; is that right? A. Yes, sir.

Q. Now, you testified yesterday that at one time Miss Joyce came in and she asked you for the name of a manufacturer and you refused to give it to her; do you remember that? A. Yes, sir.

5036

Q. And you also testified that you referred her to your superior; do you remember that? A. If it is in the record, it is correct.

Q. Did you not or did you refer her to your superior? Let us get that first. A. I do not recall whether I referred her, or whether I took her there myself.

Q. Is your memory any better to-day than it was yesterday, or was your memory better yesterday than it is to-day? A. Just which is it?

Q. Was your memory any better yesterday than it is to-day? A. No, sir.

Q. Did you say yesterday that you referred her to your superior? A. I do not know whether I referred Miss Joyce, or whether I referred the incident to Mr. Taylor.

5037

Q. And then—I withdraw that. Who is the superior to whom you either referred her or to whom you referred the incident? A. Mr. Taylor.

Q. Mr. Taylor. Now, you were asked yesterday whether or not your superior required you not to furnish her with the information that she requested; do you remember being asked that question yesterday? A. No, sir.

5038

*Kenneth March—For Commission—Cross.*

Q. Well, I will tell you that you were asked this question; "Q. Did they require you to furnish her with the information that she required?" To which you answered as follows: "A. They did not." Do you remember that now? A. No, sir—yes, sir.

Q. Is that correct? A. Yes, sir.

Q. That is a correct statement of what happened? A. Yes, sir.

Q. What did they tell you? A. They told me—Mr. Taylor told me to refer any controversy between Miss Joyce and myself to him.

5039 Q. No, no, no, no. What did they say to you about your giving information that she requested? A. I told you Mr. Taylor called me in and told me that any controversy between Miss Joyce and myself to refer to him.

Q. You were asked this question: "Q. Did they, meaning your superior, require you to furnish her with the information that she requested?" To which your answer was: "A. They did not." What did they tell you to do with regard to the information that she requested? A. That they would give the information.

Q. That they would give the information? A. Yes, sir.

Q. Do you know whether or not they ever gave it? A. I do not know.

Q. Did they tell you that they would give it? A. That is right.

5040 Q. They did tell you that they would give it to her? A. That is right.

Q. This incident took place when? A. As I recall, in December or January, I am not sure of the month.

Q. When, in December, would you say? A. I do not know.

Q. When, in January? A. I do not know that, either.

Q. I see. A. Yes.

Q. Do you remember at any other time when Miss Joyce came in to see you she asked you to sign certain slips with regard to copies? A. Yes, sir.

Mr. Haycraft: I object as not proper cross-examination.

Mr. Weisman: This is entirely proper, Judge.

Mr. Haycraft: It is not.

Examiner Bennett: Sustained.

Mr. Weisman: I except.

Mr. Haycraft: I move to strike the answer.

Examiner Bennett: It may be stricken.

Mr. Weisman: I except. May it please ~~your~~ Honor, the statement has been made by counsel for the Commission that because this witness—there is not a word of testimony to support it in the record other than the statement of counsel, that because this witness refused to furnish the name of a manufacturer they red carded them, we red carded. Now, I want to show that entire transaction. He has also further offered in evidence Exhibit No. 393, a letter which refers to this refusal to sign these slips, and I submit that it is perfectly proper and competent for me to show from this witness just exactly what took place. I cannot see where it would not be absolutely vital to the interests of the respondents to do that. It seems to me that to shut us out from that would be a serious invasion of our substantive rights in this proceeding.

Examiner Bennett: I will settle it this way: I will strike that remark from the record wherever it appears in the record.

Mr. Haycraft: What remark do you refer to?

Mr. Weisman: The Examiner remembers the remark that you made. He says it may be stricken from the record.

Mr. Haycraft: I would like to know what the remark was.

Mr. Weisman: Well, you had better listen to what we are talking about.



5044

*Kenneth March—For Commission—Cross.*

Mr. Haycraft: I am.

Examiner Bennett: It will be stricken from the record in regard to that matter.

Mr. Haycraft: It does not make any difference anyway. It is all in evidence.

Examiner Bennett: It has been stricken. Proceed.

*By Mr. Weisman.*

Q. When was the first time that you found out that Guild merchants did not desire to sell to Strawbridge & Clothier? A. In the early part of February, 1936.

5045

Q. What was the circumstance? A. They refused to show me merchandise.

Q. Who? A. Little Dress Company and International Dress Company.

Q. Those were the two? A. Those were all I contacted.

Q. The only two? A. Yes.

Q. That was the first time that you knew that the Guild merchants preferred not to do business with Strawbridge & Clothier? A. That is right.

Q. Who was the buyer that succeeded you in Department 491? A. Mr. Alex Cohen.

Mr. Weisman: I just want it noted on the record that Mr. Taylor is conferring with Mr. Freeman and Mr. Freeman is conferring with Mr. Haycraft. As an observer this is certainly an unusual situation.

5046

The Witness: Just a moment, now. Just a moment, now. I want to change my answer. I understood you—I thought you said 338 or 358.

*By Mr. Weisman.*

Q. Has somebody been giving you a signal or something to let you know you made the wrong answer? A. Well—



*By Examiner Bennett.*

Q. Do you want to make a different answer? A. Yes, sir. Mr. Yanowitz.

*By Mr. Weisman.*

Q. This is the most extraordinary situation. Has somebody succeeded you as buyer in Department 338 and Department 351 or 358? A. No, sir.

Q. What did you mean when you said that you understood me to refer to 338 or 358? A. I thought you were talking about 491.

Q. This is peculiar, indeed. I was. A. I mean, about 338 or 358 when I said—

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Q. Who succeeded you in those departments, then? A. No one has succeeded me there.

Q. What did you mean when you answered me Mr. Alexander Cohen? A. I thought you said who was the buyer.

Q. Now, when you came in charge of this department you came on February 1. I take it? A. Around there; yes, sir.

Q. What do you mean by "around there"? A. I mean it might have been February 2. It may not have been that exact day.

Q. February 1, 2, 3, let us say? A. That is right.

Q. That is right? A. Yes.

Q. Now, what was your first duty? A. To reorder styles that were selling well in the department.

5049

Q. Did you take stock? A. I did.

Q. How much stock did you find you had on hand? A. I do not recall.

Q. Well, what is your best guess?

Examiner Bennett: We have been all over that again.

Mr. Weisman: At that time it did not appear that he took stock. Now, all of a sudden it appears that he took stock.

5050

*Kenneth March—For Commission—Cross.*

Examiner Bennett: It is just the same thing over and over and over again, and ending up just as you did at the beginning. Where could you expect to get with it?

Mr. Weisman: You can never tell, your Honor.

*By Mr. Weisman.*

Q. How long after you came into the department did you take stock? A. I do not recall, it was very shortly after. If I saw a calendar I might know.

Q. Did you personally take the stock? A. I supervised the taking of stock.

5051 Q. Tell us what were the mechanics of the stock taking. A. At the time of taking stock, dividing the stock into price lines and counting each dress in that particular dress line.

Q. That is all? A. Then we took them also by size, color and type.

Q. And that is all? A. Yes, sir.

Q. And that is the only time in February that you took stock? A. Oh, no. We take stock every week and we took stock every week in February.

Q. Did you do the same thing the next week? A. Yes, sir.

5052 Q. So there can be no question about it, and so I will desist from further querying on this line. Will you tell us completely just what you did in taking stock?

Mr. Haycraft: I object.

The Witness: I have just answered you that that is what I did.

*By Mr. Weisman.*

Q. Have you told us everything that you did? A. Yes, sir.

Q. There was nothing else? A. That is all.

Q. Prior to that time you had not been buyer for this department? A. That is correct.

Q. Right? A. Right.

Q. You were not acquainted with the people from whom that department bought? A. That is right.

Q. No doubt about that? A. No.

Q. Well, if that is so what led you to believe that 60 per cent. of the stock had been purchased from Guild members? A. I pulled the orders out of the file and went through the orders and you knew who the Guild manufacturers were.

Q. How did you know who the Guild manufacturers were if just a moment ago you stated you were not familiar with the people that that department had bought with—had done business with? A. I have a list of Guild manufacturers.

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Q. What was the occasion of your having the list of Guild manufacturers at that time? A. I believe that all of your letterheads on the back have the Guild manufacturers' names on them.

Q. What made it necessary for you at the time that you took this stock, or—I withdraw that—to go through the separate operation of ascertaining how many of your items of merchandise on hand came from Guild houses? A. I—

Mr. Haycraft: I object. There is no foundation laid for that. He has not said that he did that—he did that as a part of this stock taking job.

Examiner Bennett: Overruled.

5055

*By Mr. Weisman.*

Q. The Court says you may answer. A. I tried to re-order those fast-selling numbers and was not able to, so I knew that we had been red curded and I wanted to find out how much I had in stock; I wanted to find out exactly how much stock I had that was from the Guild houses so I could throw out those odds and ends.

5056

*Kenneth March—For Commission—Cross.*

Q. You said a moment ago that you did not even know you had been red carded until you came to New York to the market, did you not? A. That is right.

Q. Let us be clear about it; You said a moment ago that you did not find out you were red carded until you came to the New York market; is that correct? A. That is true.

Q. Well, if you did not know that you were red carded what was the necessity of the going through this operation that you have just told us about? A. I had come back from New York.

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Q. Then, was that done after you came back from New York? A. Yes, sir.

Q. Not before? A. No, sir.

Q. Since you knew when you came back from New York that you could not reorder from Guild merchants, then why did you say a moment ago that you went over these lines for the purpose of finding out from whom you could reorder? You knew when you came back from New York, you have testified, that Guild merchants would not take your reorders? A. That is right.

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Q. Well, then, why did you say a moment ago in answer to my prior question that you went through this operation to ascertain what amount of reorders you could have for your fair-selling numbers? A. Because we knew we had to make mark-downs on those odds and ends that were in stock at that time. If we don't reorder them, we can't buy any more.

Q. Well, then, you went over this list to find out the odds and ends that you had in stock; is that it? A. Merchandise from Guild manufacturers.

Q. And you came to the conclusion that 60 per cent. of your merchandise consisted of odds and ends? A. Of Guild merchandise.

Q. Is that it? A. Yes, sir.

Q. What percentage of odds and ends have you got now?

Mr. Haycraft: Just a moment. The witness didn't say that. You put that in his mouth.

Mr. Weisman: That isn't so.

Examiner Bennett: I sustain the objection.

Mr. Weisman: He said 60 per cent. was Guild merchandise.

Mr. Haycraft: He didn't say odds and ends.

Examiner Bennett: It was a question that was not fair to the witness.

Mr. Weisman: Well, I think I have made that sufficiently plain to your Honor.

Examiner Bennett: I think you have.

*By Mr. Weisman.*

Q. How is it that you can remember 60 per cent. so well and you cannot remember any other figure, volume, or anything? A. Because I made a record of that and I have looked at that record since.

Q. Let's see. You have made a record. Now, what price range did this 60 per cent. cover? A. The \$10.75 price range.

Q. Just \$10.75? A. That is all.

Q. Well, this department handles—these departments handle a lot of other merchandise, don't they? A. That is right.

Q. Oh, you meant when you testified to 60 per cent. that the 60 per cent. only applied to the \$10.75? A. That is right.

Q. And you had no knowledge, or you didn't make any estimate as to the other price merchandise? A. No, sir. The Guild affected my \$10.75 price line.

Q. Didn't they affect your price range above \$10.75? A. I don't buy anything above \$10.75.

Q. You don't buy \$10.75 merchandise? A. And below.

Q. And below? A. Yes, that is right.

Q. Did you estimate the amount of merchandise that you had on hand below \$10.75, and the amount thereof that was Guild merchandise? A. That was a very negligible amount. We weren't interested in that so much.

Q. What relation did the amount of \$10.75 merchandise in this department bear to the amount of merchandise below \$10.75? A. I don't know.

Q. What is your best guess? A. I wouldn't guess.

Q. What is your best opinion? A. I wouldn't voice an opinion.

Q. Would you say that 90 per cent. of the merchandise in this department is below \$10.75 cost? A. I would not.

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Q. Would you say it was 70 per cent.? A. I wouldn't mention any figure.

Q. Do you mean to say that as—well, don't you realize that this figure of 60 per cent. is of no value to us unless we know what was the total amount of other merchandise in the department? A. I told you the 60 per cent. was of my \$16.75 retail dresses were from Guild manufacturers.

Q. Yes. Well, now, what about the rest of the dresses? What volume of dresses in dollar volume did you have in that department as compared to your \$16.75 dresses? A. I don't see that that has any connection with this.

Q. I don't care whether you see it or not. I want you to answer me. A. I don't know.

Q. Well, did you ever know? A. No, sir.

5064

Q. Did you know at the time you made the estimate?

A. I probably did, yes.

Q. And you have forgotten it completely? A. That is right.

Q. Is there anything that will refresh your recollection?

A. No, sir.

Q. Have you even the slightest recollection of the total amount of \$10.75 dresses in that department at the time you made this estimate? A. I have not.



Q. Have you the slightest recollection of the amount in dollars of Guild merchandise in your departments at the time you made this estimate? A. No, sir.

Q. Of 60 per cent.? A. No, sir.

Q. So that the sole and only thing that you can bring to us here to-day is a statement that you have forgotten everything, but you remember 60 per cent.? A. That is right.

Q. Was it exactly 60 per cent.? A. Yes, sir.

Q. Right to the fraction? A. That is right.

Q. You understand that percentages are run out into the hundreds? In other words, 60 per cent. is an exact 60 hundredths? A. That is right.

Q. Your statement is that you have a recollection that exactly 60 hundredths of your merchandise, no more, no less, was Guild merchandise? A. 60 per cent. Right.

Q. Exactly right? A. Exactly right.

Q. When you came into this department you have testified that you were new to these types of purchases; isn't that so? A. It is in the record.

Q. Well, it is not only in the record, but it is a fact, isn't it? A. That is, yes.

Q. And you knew that the A.M.C. was experienced in the market in New York City, didn't you?

Mr. Haycraft: Objected to.

Examiner Bennett: Why are you going into the A.M.C. again?

Mr. Weisman: I just want to find out one question, whether or not he asked the A.M.C. to assist him in the location—

Examiner Bennett: I think he has already testified that he didn't. He has told you exactly to what extent they used the A.M.C.

Mr. Weisman: I am not speaking about group buying. I mean, individually.

Examiner Bennett: In every respect. He has shown already just the extent to that which it was used in his department.

Mr. Weisman: I don't think so, your Honor.

Examiner Bennett: Well, ask your question, if you have another. I think you are wasting time.

*By Mr. Weisman.*

Q. Did you at any time in February, 1936, request the A.M.C., that is, the Associated Merchandising Corporation, of which your store was a member, to aid or assist you in locating new sources of supply? A. I didn't ask them, no.

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Q. Did you direct anyone for and on your behalf to ask them? A. No, sir.

Mr. Weisman: That is all.

Examiner Bennett: All right. We will take a recess until 2 o'clock.

(Whereupon, at 12:30 o'clock P. M., a recess was taken until 2 o'clock P. M. of the same day.)

AFTERNOON SESSION. 2 P. M.

5070

Examiner Bennett: Be in order, please. Have you any more from Mr. March? The cross-examination is completed.

Mr. Haycraft: Yes.

Mr. Weisman: May I, before this, just make a brief statement?

Examiner Bennett: Yes, go ahead. Go ahead.

Mr. Weisman: Prior to the adjournment, and in the course of the examination of Mr. March, a stipulation was entered into between counsel for the Commission and myself with regard to some 2,000 names in a list. I do not

know whether or not I stated it as I correctly understood it. One of my associates has called to my attention the fact that my statement appeared to be to him incomplete. I would, therefore, like to restate it for the record and see whether or not Mr. Haycraft agrees with me. (

Mr. Haycraft: I had no stipulation. I merely understand that you made a statement with the Examiner. I didn't have any part in that.

Mr. Weisman: Did your Honor so understand me?

Mr. Haycraft: It was between you and the Examiner.

Examiner Bennett: Well, I don't know that there was any stipulation, of course, in that form, but—

Mr. Weisman: Well—

Examiner Bennett: I understood that you had agreed—off the record.

5072

(There was a discussion off the record.)

Mr. Weisman: May I state, then, that as to in lieu of reading these 2,000 names that if the witness were asked, or queried with each of the 2,000, his answers with regard thereto would be substantially the same as with regard to the cross-section read off both as to his knowledge, or lack of knowledge of them, and the type of merchandise and so forth; and, in lieu of taking up the time to have the 2,000 names gone over, I understand that it was perfectly agreeable to Mr. Haycraft that such statement of mind be taken in lieu of inquiry from the witness.

Examiner Bennett: If that is correct, we will proceed on that basis.

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Mr. Haycraft: I simply did not want to acquiesce in any statement as to the truth of the facts that were made in any statement. I do not want it now that I concede that there were 2,000 or 250 or any other number of manufacturers that would be available. I do not want that concession.

Mr. Weisman: I do want the concession that this witness, if he were queried as to the 2,000 names, would re-

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*Kenneth March—For Commission—Cross.*

spond to them as he has responded to the cross section thereof.

Mr. Haycraft: I suppose that he would so testify to them, to those with which he was familiar, and to those with which he was not.

Mr. Weisman: And the result of that inquiry would be substantially the same as the cross-section revealed.

Mr. Haycraft: I assume so.

Examiner Bennett: With that understanding we will go ahead. I think that understanding is all right. It would save the time of going through all these 2,000 names.

5075 Mr. Weisman: I want it understood clearly to that effect or else I would like to go through those names.

(There was a discussion off the record.)

Mr. Haycraft: You recall, Mr. Examiner, at that time I turned the witness over to the respondent I reserved the right to present some testimony with respect to return orders which he was asked to get.

Examiner Bennett: Yes.

Mr. Haycraft: He has done so and I am now calling them to his attention.

Examiner Bennett: I thought that was at the respondents' request.

Mr. Weisman: No, at the request of counsel for the Commission.

Examiner Bennett: At the request of counsel for the Commission.

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Mr. Haycraft: Yes.

Examiner Bennett: I knew the question was raised.

Mr. Haycraft: It was, your Honor.

*Redirect, examination by Mr. Haycraft.*

Q. You will recall that at the last session on yesterday, I asked you about making a search of the records of the Strawbridge & Clothier Company to find out how many returns had been made at the request of the Guild. A. Yes.

Q. Have you made such a search?

Mr. Weisman: I object to the question as being entirely improper. The witness has testified that these returns were only made at one time at the request of the Guild, that subsequently and thereafter only—when returns were made he knew nothing about it, and that they were referred to Mr. Taylor. Mr. Taylor has testified that they would only make returns when there was proof that the garments were copies of Guild merchandise to their satisfaction. In addition to that, we have the stipulation in this case earlier, and I submit that this statement of returns made at the request of the Guild is entirely improper. If it is offered merely to show the number of returns made by them because of the fact that the garments referred to therein were copies of Guild merchandise I have no objection. I do object to Mr. Haycraft's characterization.

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Mr. Haycraft: I will change request to ordered.

Mr. Weisman: Now, you have made it worse.

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Mr. Haycraft: Now it is in accordance with the facts.

Examiner Bennett: I will make this suggestion, that these returns were made, if it is a fact; find out from the witness if he knows if it were because of the membership in the Guild. I understand that is it, and if that is the fact let it be shown. If made for any other purpose it is irrelevant.

5080

*Kenneth March—For Commission—Redirect.*

Mr. Weisman: I submit—please don't take this on the record.

(There was a discussion off the record.)

Mr. Weisman: I have no objection to that "They were co-operating with." And there is no question that these stores were not members of our organization. I think that would be conceded, they would be the first to deny it. If the other matter can be properly determined.

Mr. Haycraft: That wouldn't make any difference.

Mr. Weisman: Yes.

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Mr. Haycraft: What is the question pending?

Examiner Bennett: There is no question pending.

Mr. Haycraft: I asked one a while ago.

(Question read.)

Examiner Bennett: Do you want to modify that to meet the objections?

Mr. Haycraft: No, sir. "By order of the Guild." I will modify it to that extent.

Examiner Bennett: By what?

Mr. Haycraft: By order of the Guild.

Mr. Weisman: I urge my objection. Of course, there is no such testimony in this case at all.

Examiner Bennett: The attorney will substantiate it if he can.

5082

Mr. Weisman: What?

Examiner Bennett: I will overrule the objection and let him make a statement.

Mr. Weisman: Exception.

*By Mr. Haycraft.*

Q. Have you done so? Have you done so? Have you made the search? A. Yes, I have, Mr. Haycraft.



Q. I show you Commission's Exhibits Nos. 424 to 449, inclusive. I will ask you whether or not you identify these exhibits as being prepared, as exhibits presented by you in response to my request? A. They are.

Q. Have you checked them in any way so as to testify as to their—

Mr. Weisman: Will you speak up, Mr. Haycraft?

*By Mr. Haycraft.*

Q. —where they came from? For instance, I will ask you where Exhibits 424 to 433 came from? A. These came—these are copies of the returns—this is a copy of the return book that is filed in our files.

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(Documents referred to were marked for identification Commission's Exhibits 424 to 449, both inclusive.)

Q. The original of Exhibit 424 is a recapitulation of the same; is it not?

Mr. Weisman: I object to counsel for the Commission testifying about a document not in evidence. Now counsel for the Commission is testifying as to what these papers are.

Mr. Haycraft: I am just trying to save time.

Mr. Weisman: I am very much afraid of your efforts to save time.

Mr. Haycraft: I know. You are the most suspicious character I have ever come in contact with in my life.

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Mr. Weisman: I have grounds for being suspicious when you have the effrontery to ask this witness a question like that.

Examiner Bennett: This is off the record.

(There was a discussion off the record.)

5086

*Kenneth March—For Commission—Redirect.*

Examiner Bennett: You have had the exhibits marked for identification?

Mr. Haycraft: Yes.

Examiner Bennett: And the witness identifies them as—

Mr. Haycraft: Yes. My question was whether or not this top sheet (indicating) was a recapitulation of the information on the balance of the exhibits.

Examiner Bennett: Yes. It may be answered. Overruled.

Mr. Weisman: Exception.

5087

*By Mr. Haycraft.*

Q. You may answer. A. It is a recapitulation.

Mr. Haycraft: I offer those exhibits in evidence, Commission's Exhibits 424 to 433, inclusive.

Mr. Weisman: I object to the introduction of these papers in evidence, the same being correspondence between Strawbridge & Clothier and third parties unless this introduction in evidence is merely limited to show the number of returns. I submit that the offer of these papers to prove the truth or lack of truth of what is stated thereon is highly improper and no foundation has been laid therefor.

5088

Mr. Haycraft: I will ask the witness:

*By Mr. Haycraft.*

Q. Whether or not he had charge of this Department 338? A. At the time those returns were made I did not have charge of that department.

Q. Do you have charge of them now? A. I have charge of them.

Mr. Weisman: What materiality has that?

*By Mr. Haycraft.*

Q. These records come from that department?

Mr. Weisman: I don't care whether they come from the department or not, it still wouldn't be competent to prove the statements thereon contained in view of the positive testimony to the contrary herein. It is certainly not from this witness when he has just testified that he was not in charge of that department when the records were made.

Examiner Bennett: Are you testifying that these statements are correct?

The Witness: I am testifying that the statements for 461 are correct.

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Mr. Haycraft: I haven't got to 491 yet. I am referring to Commission's Exhibits 424 to 433. What is your testimony as to those?

The Witness: My testimony as to those is that I did not have charge of that department during 1935.

*By Mr. Haycraft.*

Q. Who had charge of that department at that time?

A: My predecessor.

Q. Who is that? A. Mr. Alex Cohen.

Q. You can identify this?

Examiner Bennett: I thought the witness said that he could not identify that.

5091

Mr. Haycraft: He said that it came from the records. That is as far as he could go.

The Witness: It is not in my department.

Examiner Bennett: He is not in position to testify as to whether they were sent back because of copies or otherwise.

Mr. Haycraft: I understand not.

5092

*Kenneth March—For Commission—Redirect.*

Examiner Bennett: All right. I cannot receive them until you get the proper identification.

Mr. Haycraft: Very well.

*By Mr. Haycraft.*

Q. I show you Commission's Exhibit 434, and ask you to testify as to what it is. A. It is a recapitulation of the returns that were made to Guild—at the request of the Fashion Originators Guild of America, Inc.

Q. I ask you what Exhibits 435 to 446 are, both inclusive? A. Why, they are copies of original return slips.

Q. Of what department? A. Of Department No. 491, Economy Dress Shop.

Q. Were you in charge of that department at the time these returns were made? A. Yes, sir.

Q. Can you testify as to the percentage, or, rather, can you testify as to the authenticity of these returns? A. I can testify as to the authenticity of these returns.

Q. Will you testify as to whether or not the dresses in these returns were actually returned to manufacturers thereof as indicated on each exhibit? A. They were.

Q. Were they returned for the reasons stated on the return? A. They were; yes, sir.

Mr. Haycraft: I offer them in evidence.

5094

Mr. Weisman: I have no objection to them being offered and received in evidence if it is merely to show the amount of returns and what was said about the return to the persons to whom they were returned. I have objection if they are going in as evidence of the sole reason for the return because some of these say "Ordered returned by Fashion Originators Guild." I submit that that is not to be deemed proof of that fact. As a matter of fact, the witness had testified that one of the most—well, going even before that, the witness has tes-

*Kenneth March—For Commission—Redirect.*

5095

tified that when Miss Joyce came in she presented sketches to show that it was a copy, and then, if they found that it was a copy he returned it, but subsequently they were only returned upon that being proven to them that they were copies in truth and in fact. This brings in the question of copies which I think we have already gotten out of this case by way of stipulation.

Mr. Haycraft: There is no question of copies on those documents there.

Mr. Weisman: I have finished my objections, Judge.

Examiner Bennett: Overruled. Received in evidence.

5096

Mr. Weisman: I except.

(List of returns, giving date of return, manufacturer, style number, and quantity returned, heretofore marked for identification Commission's Exhibit 434, was marked as an exhibit and received in evidence.)

(Merchandise return orders of Strawbridge & Clothier, Philadelphia, heretofore marked for identification Commission's Exhibits 435 to 446, were marked as exhibits and received in evidence.)

*By Mr. Haycraft.*

Q. Now, when you were on the witness stand this morning and you were being examined by counsel for the respondent, you testified that you had not asked the A.M.C. to furnish you with assistance in obtaining a supply of merchandise, or something to that effect. Do you recall that? A. I do.

5097

Q. I will ask you whether or not the A.M.C., however, did furnish you with the names of available sources of supply? A. They did.

5098

*Kenneth March--For Commission--Redirect.*

Mr. Haycraft: I ask that this document be marked for identification.

(A document, consisting of a letter from the A.M.C. to Strawbridge & Clothier, and having attached to it fifteen sheets containing lists of names of various concerns, was marked for identification Commission's Exhibits 450-A to 450-F, both inclusive.)

Examiner Bennett: Off the record.

(There was a discussion off the record.)

Examiner Bennett: You may proceed.

5099

*By Mr. Haycraft.*

Q. Can you identify that? A. Yes, sir.

Q. What is it? A. This is a list of resources sent to us by the A.M.C.

Q. Have you seen this before? A. I saw it at the time that it was sent to Mr. Chance. He turned it over to me immediately.

Q. Had you seen a similar list to this before that time? A. No, sir.

Q. That is the first list that you recall? A. Yes, sir.

Mr. Haycraft: I offer it in evidence.

Mr. Weisman: I have no objection to the introduction of this list in evidence showing the available resources as given by the Associated Merchandising Corporation in addition to Guild houses. I do, however, object if it is offered as a complete list because the exhibit by its very words says that it will continue during the coming week to give more houses, as your Honor will see.

Examiner Bennett: It isn't completed, evidently.

Mr. Weisman: It is a partial list.

Examiner Bennett: Yes.

5100



*Kenneth March—For Commission—Redirect—Recross.*

5101

Mr. Weisman: I have no objection to it.

Examiner Bennett: All right. Received.

(The documents referred to, heretofore marked for Identification Commission's Exhibits 450-A, 450-B, 450-C, 450-D, 450-E, 450-F, 450-G, 450-H, 450-I, 450-J, 450-K, 450-L, 450-M, 450-N, 450-O, and 450-P, were marked as exhibits and received in evidence.)

Mr. Haycraft: I have nothing further.

Examiner Bennett: Any recross?

Mr. Weisman: Just a slight recross-examination.

*Recross-examination by Mr. Weisman.*

5102

Q. With regard to Commission's Exhibits 435 to 446, and the other exhibits constituting returns, who actually made the return? A. The stock boy in my department.

Q. Who wrote out what appears on the return? A. The stock boy in the department.

Q. And who spoke to the stock boy? A. I did.

Q. Personally? A. That is right.

Q. You instructed him what to put on? A. That is correct.

Q. When you used the words hereon, or when you instructed him to use the words hereon "Ordered returned by Fashion Originators Guild," did you mean that that was the only reason that you returned them? A. Absolutely.

5103

Q. Well, by that, was it a question as to whether or not the dress was in truth or in fact a copy immaterial to you? A. I returned that merchandise at the instruction of Miss Joyce. That is the only reason that I returned them.

Q. Whatever Miss Joyce told you to do you did without regard to whether or not the merchandise was a copy? A. If she showed the sketch of the original dress.

5104

*Kenneth March—For Commission—Recross.*

Q. Well, when she showed you the sketch of the original dress, she did that to show you that the merchandise that she was calling to your attention was a copy of the original; isn't that so? A. Of course.

Q. You don't want to give us the idea that merely because Miss Joyce would come into your place and say "Send that back," or "Send that back," you would send it back? A. Not unless she had a sketch of the original dress, I said that before.

5105

Q. And when you looked at the original dress—I will withdraw that. And when you say not unless she had a sketch of the original dress, you mean that from that sketch you could compare the original with the one that she asked you to send back? A. Miss Joyce also had the name of the manufacturer who copied the dress and the style number. If that corresponded with the dress in my stock then I returned the dress.

Q. Yes. In other words—is it Mrs. Joyce or Miss Joyce? A. I don't know. I don't know her that well.

Q. I didn't understand. Once you said Miss and once you said Mrs. A. Oh, no. I don't think so.

Q. In other words, if Miss Joyce came in to see you with the name of the original manufacturers' origination— A. That is right.

5106

Q. —and the name of the copyist and a sketch of the original which you could compare with the one that she was asking you to send back as a copy and showed you these things visibly, then if you saw that there was reasonable ground for her action, you would return the dress as a copy? A. Providing the style number on it that she had from the man who copied the dress was the same as the dress that I had in my stock.

Q. Yes. I mean you just didn't return a dress because Miss Joyce wanted it returned irrespective of the fact as to whether or not she demonstrated to you that it was a copy? A. She had to furnish proof that it was a copy.

Q. Yes. That is what I mean. And upon proof being furnished then you would return the dress? A. That is correct.

Q. And when the words "Ordered returned by the Fashion Originators Guild" appear on here you meant that you understood that the ordering consisted of first convincing reasonably that the merchandise returned was a copy of an original; isn't that so?

Mr. Haycraft: Objected to, Mr. Examiner.

Mr. Weisman: I think it is a very fair question.

Examiner Bennett: Object on what ground?

Mr. Weisman: Did your Honor rule?

Examiner Bennett: I say, what ground?

5108

Mr. Weisman: Oh, excuse me.

Mr. Haycraft: Oh. On the ground, Mr. Examiner, that the exhibit there and the testimony already up to this time speaks for itself. An order is an order, it seems to me.

Examiner Bennett: Well, I am going to have this witness answer. I am going to have him answer.

*By Mr. Weisman.*

Q. The Court says you may answer. A. Will you read me the question?

(Question read.)

5109

A. That is correct.

Q. You don't want to give us the idea that the words "Order Returned" were used in the common ordinary sense that somebody ordered you to do so? You mean that you were requested to do so; isn't that so? A. We were ordered to return the dress.

Q. But before you executed the order you were convinced that the order was reasonable?

5110

*Kenneth March—For Commission—Recross.*

Mr. Haycraft: Objected to as irrelevant, immaterial, not proper cross-examination.

Mr. Weisman: I think it is perfectly proper.

Mr. Haycraft: Whether it is reasonable or unreasonable has no bearing on this issue in this case. That is just the point I want to make.

Mr. Weisman: I think it certainly is.

Examiner Bennett: I will let him answer. I will let him answer.

A. A request is an order.

5111

*By Mr. Weisman.*

Q. You didn't differentiate between request or order?

A. No, sir.

Q. As a matter of fact, on some of these slips you said: "Requested to be returned by the Guild" and so on, and on some you said "Ordered to be returned." A. I meant the same thing.

Q. In both cases they meant requests? A. They meant ordered.

Q. In both cases they meant ordered, and ordered means request and request means order? A. They both meant the same thing, request and order. I was asked to return the dress.

Q. That is right. You were asked to return the dress.

5112

Mr. Weisman: That is all I have.

Mr. Haycraft: That is all I have.

Examiner Bennett: You are excused.

(Witness excused.)

Mr. Weisman: I believe that the only items I had reference to was Item 1 and Item 2. I am quite willing for that to go in.

Examiner Bennett: You asked for it.

Mr. Weisman: If Mr. Haycraft is willing to have this go in I am.

Mr. Haycraft: I am.

Mr. Weisman: It is stipulated that the following may be incorporated in the record with the same force and effect as if Mr. Roy Clark was here and testified under oath as a witness in this case with regard thereto:

"In the testimony which I gave on August 6, 1936, I was asked certain questions as to the figures concerning which I testified. As to certain of the questions, I could not, when asked, give positive and definite replies because I did not have the information with me. Since the questions have been asked, I have consulted the records and now find as follows:

5114

"(1) ADVERTISING ALLOWANCES: According to my present recollection, I stated, when on the stand that as to Department 355 there was received an advertising allowance on the Paul Sargent line in 1935. It is a fact that all such allowances were absolutely discontinued in May, 1934. The fact of advertising allowances, therefore, has no bearing whatever on the figures which I gave, except as to allowances next referred to.

"(2) TEXTILE MANUFACTURERS: The total amount of newspaper advertising allowances received for Departments 331, 338, 358, 350, 355, 371 and 373 for the five months of 1935 which I referred to was \$284.00. All of this came from Textile Manufacturers and not from Dress Manufacturers. No such allowance was received in 1936."

5115

Examiner Bennett: What is the next one?

Mr. Weisman: Yesterday, when Mr. Chance was on the stand, I asked him when he got up in the recess a list setting forth the number of manufacturers which were availed of in the various depart-

ments under his supervision— which came under his supervision in 1936, but which were availed of by Strawbridge & Clothier in 1935 by those departments. He has. It is stipulated between counsel for the Commission and counsel for the respondent that if Mr. Chance were to take the witness stand and be sworn as a witness he would testify as follows:

That for the year 1935 Department 331 used 104 manufacturers during that year.

That for the year 1935 Department 350 used seventy-two manufacturers during that year.

5117

That for the year 1935 Department 338 used fifty-one manufacturers during that year.

That for the year 1935 Department 358 used 116 manufacturers during that year.

That for the year 1935 Department 371 used seventy-three manufacturers during that year.

That for the year 1935 Department 373 used sixty-five manufacturers during that year.

That for the year 1935 Department 382 used 126 manufacturers during that year.

That for the year 1935 Department 385 used seventy-seven manufacturers during that year.

That for the year 1935 Department 491 used seventy-nine manufacturers during that year.

5118

That for the year 1935 Department 492 used forty-two manufacturers during that year.

That for the year 1935 Department 493 used twenty-five manufacturers during that year.

Mr. Haycraft: It is understood those all include the Guild.

Mr. Weisman: Did you make a separate list of the Guild?

Mr. Chance: No, that is the total of the Guild and others.



*Proceedings.*

5119

*Louis Weinstein—For Commission—Direct.*

Mr. Weisman: Very well.

Yesterday I examined Mr. Chance with regard to Commission's Exhibit 410. In connection therewith I asked him if he would—first, I asked him from whom he had obtained that list. He stated that he had obtained it from his statistical department. I asked him how he had made that request for that list and whether it was oral or in writing. He said in writing. I asked him if he would produce a copy of the request which led to the formulation of this list. He has now produced such a request which is as follows:

5120

"Mr. Knipe: Record of total amount of gross business transacted with the attached list of resources beginning February 1, 1935, to January 31, 1936."

LOUIS WEINSTEIN was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Examiner Bennett: What is your name?

The Witness: Louis Weinstein.

*Direct examination by Mr. Haycraft.*

Q. Where do you live, Mr. Weinstein? A. Philadelphia.

5121

Q. What is your occupation? A. Divisional merchandise manager.

Q. What is that again? A. Divisional merchandise manager.

Q. For what firm? A. Blauner's, Ninth and Market, Philadelphia.

Q. What is the full name of that concern? A. B-l-a-u-n-e-r-s, Blauner's, Inc., Philadelphia.

5122

*Louis Weinstein—For Commission—Direct.*

Q. What business is Blauner's engaged in? A. Women's wearing apparel.

Q. How long have you occupied that position? A. Since February 1, 1936—1935.

Q. 1935. Before that what did you do? A. Before that I was in business for myself in Philadelphia.

Q. Have you been in this business of women's wear for any length of time? A. Yes, sir.

Q. How long? A. Oh, approximately, fifteen, sixteen years.

5123

Q. Can you name some of the other stores that you have been in besides being in business yourself? A. Yes. Prior to my connection here, with Wright-Cummer Company of Dayton, Ohio. Before that my previous occupation was formerly with Blauner's, Inc.

Q. You were with them? In what capacity before? A. As a buyer.

Q. What department? A. Various departments at that time.

Q. Various departments? A. (Witness nods head affirmatively.)

Q. How is Blauner's business divided now as to departments? A. Consists of dresses, coats, furs, suits, underwear, shoes, millinery.

Q. Now— A. Infants' wear.

5124

Q. In the dress department, as I understand you—you have charge of it now? A. That is right. I do have.

Q. Do you have different groups or divisions with respect to price ranges that you handle? A. That is right. I handled the wholesale \$6.75 and \$10.75.

Q. At the present time? A. At the present time I am not in the dress department.

Q. You are not? What department are you in now? A. Coat departments.

Q. Coat departments? A. (Witness nods head affirmatively.)

Q. How long have you been in the coat departments?

A. Just since July 1, 1936.

Q. I see. From January 1, 1935, to July 1, 1936, you were— A. In the dress department.

Q. Dress departments? A. Yes.

Q. You had charge of the \$6.75 and \$10.75 wholesale prices? A. That is right.

Q. What retail price are they usually sold at? A. \$9 and \$15.

Q. Now, while you were—

Mr. Weisman: I couldn't hear the last part of the answer.

Mr. Haycraft: \$15.

5126

Mr. Weisman: Oh.

*By Mr. Haycraft.*

Q. While you were in charge of the dress department that you have indicated from January, 1935, until July, 1936, did you learn of the Fashion Originators Guild of America, Inc.? A. Yes, sir.

Q. When did you first become acquainted with that organization? A. Through the manufacturers, I think, around last February. When I would come in with a buyer, myself and a buyer would come in to some of the manufacturers and they would inform us or ask us whether we had signed up with the Fashion Originators Guild, and showed us their agreement in blank and asked us to sign it. According to the terms written into that agreement it would have been impossible for us to accede to those terms, and not signing that paper which they presented before us, they refused to permit us to buy or leave any orders for merchandise.

5127

Q. What year was that? You said February. A. 1935.

Q. 1935.

5128

*Louis Weinstein—For Commission—Direct.*

Mr. Weisman: Wait just a moment. Have you counsel here?

The Witness: No, sir.

Mr. Weisman: Does he know you are testifying?

The Witness: No, sir.

Mr. Haycraft: I object to that.

Mr. Weisman: Wait a minute.

Mr. Haycraft: Mr. Examiner—

Mr. Weisman: Just a moment. I am rather in an anomalous position. I want the record to show that I am one of counsel for Blauner's. Have you ever heard of me? Milton C. Weisman?

5129

The Witness: No, sir.

Mr. Haycraft: Ha, ha.

Mr. Weisman: Does Mr. Blauner know that you are testifying?

The Witness: Yes, sir.

Mr. Weisman: All right.

Mr. Haycraft: Maybe it is a different Blauner.  
(There was a discussion off the record.)

*By Mr. Haycraft.*

Q. I show you Commission's Exhibits Nos. 3-A, 3-B, 3-C, 3-D and 3-E. A. Yes.

5130

Q. I will ask you if you can identify any of those exhibits as the paper which you said the manufacturers wanted you to sign? A. I believe this is a blank similar to what was presented to me.

Q. The one on top there, you think? A. Yes.

Q. What is there in that blank that you could not co-operate with?

Mr. Weisman: I object to that as incompetent, immaterial and irrelevant to show a witness a piece of paper that is already in evidence and say what is there that you could not co-operate with. He

*Louis Weinscin—For Commission—Direct.*

5131

answered he did not want to sign the agreement to co-operate in the elimination of style piracy. That is all there is to it.

Mr. Haycraft: I think we should let the witness testify instead of Mr. Weisman.

Mr. Weisman: He did so testify a moment ago.

Examiner Bennett: All right.

Mr. Weisman: He testified that he could not. It is perfectly obvious that such a statement is incompetent.

Mr. Haycraft: He has already testified, you say. The Examiner has already ruled. What are you still talking about now?

5132

Mr. Weisman: Wait a moment. You must not be so rude to me.

Examiner Bennett: I have ruled. I have overruled the objection.

Mr. Weisman: I did not hear it. May I have an exception?

Examiner Bennett: Yes, surely.

Mr. Weisman: Exception.

Examiner Bennett: Noted.

A. The clause in here stating that we did not want to buy or be compelled to buy no copy of a pirated dress was the clause, I believe, that prevented us from signing it.

5133

*By Mr. Haycraft.*

Q. At the time in February, 1935, can you testify as to the manufacturers that you called on, with the experience that you have already related, who were Guild manufacturers that you called on? A. Well, I only recall just a few, one was L. & D. Beilinson and C. H. D. Robbins, I have a list in my pocket.

5144      *Louis Weinstein—For Commission—Direct.*

Q. Will that refresh your recollection? A. If I may use it.

Q. Yes. A. LeClair.

Mr. Weisman: May I have the date that this visit occurred?

Mr. Haycraft: He said February, 1935.

Mr. Weisman: I want to know the time of the month. I think it is important.

Mr. Haycraft: If you will just let the witness testify—I do not like this interruption all the time. Mr. Examiner. Let the witness give his testimony.

5135

Mr. Weisman: I say it is very important. Some of these were not members of the Guild at the time, and I want to find out; before I submit this witness to cross-examination I want to find out when he said that he believed he visited them. There is nothing wrong in that.

Mr. Haycraft: It is just wasting time.

*By Mr. Haycraft.*

Q. Proceed with your testimony. A. C. H. D. Robbins I visited. If you will furnish me with a list of the names of members of the Guild I can probably pick them out for you.

5136

Q. I am sorry, I cannot do that. If you have anything that will refresh your recollection will you please do so?

A. Mine is just a jumbled list. I have no accurate record of the members of the Guild at that time.

Q. I have a list of the members of the Guild. In what price range? A. \$10.75 price range.

Q. I show you Commission's Exhibit 399-A, which is a list—399-B, which purports to be a list of the Guild members in 1935.

Mr. Weisman: When does that purport to be a list?



Mr. Haycraft: He said in the spring of 1935.

Mr. Weisman: No, you said 1935. What date is that instrument dated?

Mr. Haycraft: There is no date on it.

Mr. Weisman: How do you know it purports to be a list of manufacturers in 1935?

Mr. Haycraft: The witness has identified it.

Mr. Weisman: Oh, I will let him testify to that on your statement.

Mr. Haycraft: He is testifying from the record.

Mr. Weisman: Is he? Go ahead.

A. F. E. D. Dress Company, L. & D. Beilinson, Jo-Mac Dress, C. H. D. Robbins, B. Tobias, Lee Clair Costumes, Phil Zohn, Will Steinmann.

5138

*By Mr. Haycraft:*

Q. Since or subsequent to February, 1935, did you make any effort at any time to contact with members of the Guild? A. Well, it was during all of the period of the year 1935 that we had contacted with manufacturers during the course of that time. When we were—we were eventually unable to buy from those manufacturers, thereby closing our markets to us practically in that type of merchandise.

Q. Can you testify as to whether or not you ever bought any merchandise for a lesser wholesale price than \$10.75?

A. Yes, sir.

5139

Q. From Guild manufacturers? A. From manufacturers?

Q. Yes, what manufacturers—were they bought from manufacturers that later became members of the Guild, or Guild manufacturers? A. Yes, we purchased it at the \$6.75 wholesale mark from members who later became members of the Guild or affiliated with the Guild.

Q. Can you name any of those? A. Rex Lee Dress.

Q. Rex Lee Frocks? A. Rex Lee Frocks, yes. Rosenthal Tollman.

5140

*Louis Weinstein—For Commission—Direct.*

Q. I show you Commission's Exhibit 399-A and ask if that refreshes your recollection? A. Ruderman & Sussman. That was an \$8.75 wholesale cost. G. W. Cohn Corporation, H. & I. Cohn and Goshen, Gladdy, George Hess Company, Lipman Brothers, Steinman, Tobias.

*By Mr. Haycraft.*

Q. Well, now, can you testify as to the approximate amount of business that you did with each one of these Guild houses in 1935 and the date that you were unable to get further merchandise? A. Will you repeat that question?

5141

Mr. Haycraft: Read the question.

Q. (Question read.) A. I have a partial list if I may be permitted to use that.

Q. That was prepared under your supervision, was it? A. Yes, sir.

Q. All right. Go ahead. A. Beilinson, \$1,261. That is for 1935 up until the stoppage point. I don't have the exact date of the stoppage point because we were interested—these records were just taken from the manufacturers' cards. George Hess, \$3,260; Lee Clair, \$1,911; C. H. D. Robbins, \$4,376; Will Steinman, \$5,093; B. Tobias, \$1,560; P. Zallon, \$3,633.

5142

Mr. Weisman: Wait a minute. Will you give me that last?

The Witness: P. Zallon.

Mr. Weisman: Yes.

The Witness: \$3,633 G. W. Cohen, \$4,261; H. & I. Cohen & Goshin, \$1,621.

Mr. Weisman: Wait a minute. You go too fast for me. What was G. & W. Cohen?

The Witness: \$2,461.

Mr. Weisman: Yes.

The Witness: H. & I. Cohen, \$1,621; Gladly, \$1,111; Georgeous Frocks, \$2,629; Rexley Frocks, \$2,505.

Mr. Weisman: Wait a minute. What was the last one?

The Witness: Rexley Frocks, \$2,505; Rosenthal & Kalman, \$3,262.

*By Mr. Haycraft.*

Q. Are you able to give the dates of any of those when those accounts were closed? A. Yes. Why, I believe I have a notation of the month that the account was closed.

Q. Will you give us that? A. I do not have each one individually, but I do have them on some of them. 5144

Q. Give what you have. A. Rosenthal & Kalman, purchased in October, 1935; Georgeous, October, 1935; Gladly, October, 1935; H. & I. Cohen, 1935, in October; G. W. Cohn, October, 1935..

Q. Can you testify as to the type of garments that you were getting from each of those manufacturers and the price range? A. Well, this latter group were \$6.75 wholesale price.

Q. What type were they—were they all the same type or different types? A. Well, each individual manufacturer makes his own individual type merchandise.

Q. Well, start at the top of that list that you have there and beginning at Beilinson, I believe, is the first one. Give us the type of garments as well as the price range. A. The price range of Beilinson was \$10.75, and in a dressy type merchandise, street and afternoon wear. 5145

Q. All right. A. George Hess was street and afternoon wear.

Q. The same price? A. \$8.75. Lee Clair was \$10.75, evening wear., C. H. D. Robbins was \$10.75, also \$11.75. I believe they made at that time. And they made dressy afternoon wear. Will Steinman was evening wear.

5146

*Louis Weinstein—For Commission—Direct.*

P. Zahn was street and afternoon wear, \$10.75. Beilinson—well, we had that one. G. & W. Cohn was \$6.75, street wear. H. & I. Cohen, street wear, at \$6.75. Gladdy was street wear at \$6.75. Rexley at \$6.75, street wear. Rosenthal, Kalman, \$6.75 and \$7.75, street wear and afternoon.

Q. What did you do after you found you could not get the goods or garments from these manufacturers? A. We purchased merchandise from other manufacturers.

Q. Where were those other manufacturers located? A. New York City.

Q. Were any of these lines later made available to you? A. Yes, they were.

5147

Q. Which ones? A. The members of the \$6.75 group, subsequently most of them dropped out of the Guild affiliates.

Q. Do you recall when that took place? A. I believe it took place about three months after the stopping.

Q. That would make it about the first of this year, then? A. Somewhere thereabouts. I don't know the correct date of that, but approximately the latter part of December or maybe a few, they dropped out, a few at a time. They all didn't drop out at the same time.

Q. Well, then, how many of those firms are you now buying from, or were buying from at the time you left that department? A. I think a great many of them were—we purchased merchandise from after they subsequently dropped out of the Guild membership.

5148

Q. That is, of the \$6.75 or \$8.75 group? A. Yes, sir.

Q. How about the \$10.75 group? A. The \$10.75, those that were members remained members. I don't believe—I think maybe one or two dropped out, but I know, due to the fact that we were unable to buy in their type of merchandise from those manufacturers we practically had to drop out of that price range from the store's selling viewpoint.

Q. What was that price range you had to drop out? A. \$14.95.

Q. Which? A. \$14.95.

Q. \$14.95? A. Yes. \$10.75 wholesale cost.

Q. Wholesale cost. What price range did you use to replace that order, or were you replacing? A. Well, we went and purchased instead of goods at \$10.75, we purchased goods at \$8.75 at a little lower price.

Mr. Haycraft: That is all.

Mr. Weisman: Have you any witness after him?

Mr. Haycraft: Yes.

*Cross-examination by Mr. Weisman.*

5150

Q. So at the present time you are doing business with G. W. Cohn?

Mr. Haycraft: Better make it at the time he left the department.

Mr. Weisman: Well, I mean——

*By Mr. Weisman.*

Q. I understood you to say that for about three months you didn't make any purchases from these \$6.75 houses?

A. That is right.

Q. And then after that three months you had no difficulty thereafter in getting purchases from them? A. From most of them.

5151

Q. And now I am trying to find out if you were unable to get it from all of them. See? Now, how about G. W. Cohn? A. Yes, I remember them.

Q. What about Gladys Truside? A. Yes, I remember her.

Q. How about Gorgeous Dresses? A. I do not remember them.

5152

*Louis Weinstein—For Commission—Cross.*

Q. Do you recall whether or not they are willing to sell you if you are willing to buy? A. That I do not remember.

Q. What about Rex Lee? A. We have been buying from them.

Q. What about Rosenthal & Kalman? A. I do not remember.

Q. Did not they drop out of the Guild? A. I do not remember.

Q. Tell me this: You were well acquainted with the New York market, and are you not now? A. Yes, I am.

5153

Q. Compared to some of the other prior witnesses you show a real knowledge.

Mr. Haycraft: I move that that statement be stricken.

Examiner Bennett: It may be stricken.

Mr. Weisman: It was not made for the record, but it was made to reassure this witness. It is a pleasure to see somebody who knows something.

The Witness: I am afraid of that statement.

Mr. Haycraft: Beware of Greeks.

Mr. Weisman: I have been called many things, but I have never been called a Greek before.

Mr. Haycraft: When they come bearing gifts.

5154

Mr. Weisman: *Tuneo Danios donis ferentes*. That means—that is Latin for "Beware of Greeks bearing gifts." Now, I have added something to the scope of your knowledge, Mr. Haycraft.

Mr. Haycraft: No, you have not. I have studied Latin.

Mr. Weisman: But to what avail? But to what avail?

Mr. Haycraft: You might be surprised.

Mr. Weisman: Tut, tut. You mean I might be astonished?



*By Mr. Weisman.*

Q. I understood you to say you are pretty well acquainted with the New York market, are you? A. Fairly generally.

Q. You have been in this business for a great many years, and as such you have gone into the New York market frequently? A. Yes, sir.

Q. I cannot hear you? A. Yes, sir.

Q. Tell me in your opinion how many manufacturers are there making dresses at \$10.75? A. I have never counted them.

Q. No? A. No.

Q. I know you have not done it, none of us have ever done it, because we have not taken that long, but what is your best opinion? A. I really could not express an opinion but there are quite a few. 5156

Mr. Haycraft: I object.

*By Mr. Weisman.*

Q. Would you say in your own experience in the market that there are in excess of 750 garment manufacturers of that type?

Mr. Haycraft: That is objected to. No foundation in fact in evidence in that regard.

Mr. Weisman: Here is a man who knows something about it. If you will just let us alone, we both know about this and maybe we can get somewhere. 5157

Mr. Haycraft: I object. Why do you not stick to the 250 that you put in your statement this morning. At least stick to that?

Mr. Weisman: Do you want me to qualify this witness on that or not? I think we will all concede that this is a man who knows what these people are

5158

*Louis Weinstein—For Commission—Cross.*

—he knows the dress business and knows how many people are in it, apparently. Please do not interrupt this with comments of that character which simply go to show how little you know about the proposition.

Mr. Haycraft: I am objecting to that. I am not objecting to its competency, but I am objecting to the question.

Examiner Bennett: I will overrule the objection.

The Witness: What is the question?

Q. (Question read.) A. At what price?

5159

*By Mr. Weisman.*

Q. \$10.75 and up. A. I do not know whether there are 750.

Q. You do not know about that? A. No.

Q. What is your best guess as to how many there are?

A. Oh, about seventy-five—You asked for my best guess.

Q. No, I do not want you to guess. I wanted your best opinion. Now, I did not want you to merely guess. Did you ever see these directories that are issued? A. Yes.

Q. Have you any idea of how many such manufacturers there are listed in these directories? A. No, unless you would count the number of manufacturers on each page and multiply that by the number of pages in the book.

5160

Q. Well, look at this. I am going to show you one and see if you want to change your mind after looking at that. Maybe it will refresh you a little bit.

Mr. Haycraft: I object to that as it is not in evidence. That book is not in evidence.

The Witness: Do you want me to count it?

*By Mr. Weisman.*

Q. Do you think that was your best guess when you said seventy-five?

Mr. Haycraft: I insist on my objection.

Examiner Bennett: I think I will permit it. You can ask questions but not about the book.

Mr. Haycraft: He is still examining the book, your Honor.

Examiner Bennett: I will sustain an objection to his testifying as to what is in that.

Mr. Weisman: I do not want him to testify as to what is in the book.

Examiner Bennett: He can refresh his recollection from the paper that you want to show him if it will refresh his recollection.

*By Mr. Weisman.*

5162

Q. I show you this book and ask you whether looking at that will refresh your recollection as to the approximate number of dress manufacturers engaged in that business in the City of New York selling or manufacturing dresses at \$10.75 and up?

Mr. Haycraft: I object to that.

Examiner Bennett: Overruled.

*By Mr. Weisman.*

Q. Look at that and see if that does refresh your recollection. A. I would say, from this book, seventy-five to one hundred manufacturers at \$10.75.

Q. You mean that after your recollection is refreshed from this book you still say that there are only about seventy-five? A. Yes.

5163

Q. Is that so? A. Yes.

Q. Well, I am afraid, Judge, I will have to take a little time with this. A. There are about fifteen names on the page and there are five pages, and even if there were fifteen names to eighteen names on the page, that is just a rough guess, but it would be about that.

5164

*Louis Weinstein—For Commission—Cross.*

Q. Suppose I told you that there were twelve pages and that the average page had twenty-five names on a page, what would you say? A. You probably looked at a page that had no advertisement. I looked at the page that had an advertisement on it. Naturally, that takes up some of the space.

Q. Did you hear me ask you whether or not your recollection would be refreshed as to the \$10.75 and up; now, just look at this book.

Mr. Haycraft: I object to this. I objected before and I object again to this witness being handed this book and asked questions about it.

5165

Examiner Bennett: Overruled.

*By Mr. Weisman.*

Q. Look at this book and state whether or not that refreshes—whether or not your recollection is refreshed as to the number of manufacturers at \$10.75 and up from what is therein listed? A. Do you want me to count that list of manufacturers in there?

Q. No. Although you may count them if that will refresh your recollection.

Mr. Haycraft: I object to any further use of this book. He has refreshed his recollection from it and testified.

5166

Examiner Bennett: I will let him refresh his recollection from the book if he can.

A. About 150, I would say, by an almost accurate count.

*By Mr. Weisman.*

Q. About 150 in this book? A. Yes, sir.

Q. What do you know about the competition among this 150, is it rather keen?

Mr. Haycraft: I object unless he shows some foundation that he knows the 150. He does not say how many he knows in the book.

*By Mr. Weisman.*

Q. You go into the market at all times, do you not, generally, in the performance of your duties as buyer? A. Yes, sir.

Q. And you know what is going on in the market right along? A. I do.

Q. Blauner's is a good account, generally regarded as such in the market? A. Yes, sir.

Q. Do you know whether or not the competition to sell Blauner's is rather keen among the various manufacturers engaged in the New York market?

Mr. Haycraft: I object unless there is some testimony that these manufacturers engaged in the New York market are those with which the witness is acquainted.

Examiner Bennett: I will let you testify to that. Overruled.

*By Mr. Weisman.*

Q. The Court says you may testify. A. Yes, sir. I think that all manufacturers are willing to sell Blauner's.

Q. I understood you to say in answer to Mr. Haycraft's question as to what you did when these people of the Guild did not want to sell you, to say that you went out and got merchandise from other manufacturers? A. Yes, sir.

Q. As a matter of fact, I see that the only manufacturers that you did business with out of 150 were a total of seven; is that correct; that is, at \$10.75; I believe you

5170

*Louis Weinstein—For Commission—Cross.*

gave T. E. D. Dress Company, L. & D. Beilinson, Jo-Mac Dress Company, C. H. D. Robbins Company, B. Tobias, Lee Clair Costumes, Phil Zahn, and Will Steinman. A. Yes, sir. Those are the ones that we were in the habit of buying from and doing business with.

Q. They were? A. Yes.

Q. You know that Phil Zahn is no longer a member of the Guild, do you not? A. I believe so; yes, sir.

Q. Do you know that you are doing business with them now, do you not? A. I do not.

Q. No? A. No.

5171 Q. You do not buy from him? A. I do not know whether we are buying from him now.

Q. Do you know whether or not you were buying from him last month? A. I do not believe so.

Q. Do you know whether or not he is willing, able to sell you and was last month if you were willing to buy from him? A. I really could not answer that question.

Mr. Haycraft: I object.

Examiner Bennett: Overruled.

*By Mr. Weisman.*

Q. Well, it is evident, is it not, that out of all of these manufacturers in the New York market, there were only six with whom you were doing business? A. Yes, sir.

5172 Q. Tell me what volume of business does Blauner do? A. I do not know really whether I am in position to say that or not.

Q. What is your best opinion? A. You mean at what price range?

Q. Per year, what is your total? A. You mean at what price range and up?

Q. \$10.75. A. I should judge maybe \$150,000 total.

Q. \$150,000 total per year? A. Approximately.

Q. Approximately? A. Right.



Q. During the entire—is that purchases at wholesale?

A. That is sales at retail.

Q. That is sales at retail? A. Yes.

Q. What is Blauner's largest source of supply, do you know? A. In that field?

Q. Yes. A. I believe C. H. D. Robbins was.

Q. Is there a concern in which Blauner's has an interest which furnishes them with a lot of their goods? A. Not to my knowledge.

Q. Tell me something of their accounts; from whom do they buy? A. I would have to get the ledger to do that.

Q. Did you ever hear of Lombardy Frocks? A. Yes.

Q. Who are the principals in Lombardy Frocks? A. I really do not know. 5174

Q. Did you ever hear that Blauner's is interested therein? A. No.

Q. Do you not know that Lombardy Frocks was one of the largest sources of supply for Blauner's?

Mr. Haycraft: I object unless it is shown within the witness' knowledge.

Mr. Weisman: I am asking the witness whether he knows.

The Witness: They are cheaper, you know; \$4.73.

Mr. Weisman: I know that Lombardy is a \$4.75 house.

Mr. Haycraft: I object to the question because it is not within the direct examination. 5175

Mr. Weisman: I submit it is a foundation question that I want to lead up to.

Mr. Haycraft: It is a fishing expedition.

Mr. Weisman: The old mind reader at work again. No, I know what I am talking about. Too bad you do not.

Mr. Haycraft: I do not think you ought to be allowed to smear it on this record.

5176

*Louis Weinstein—For Commission—Cross.*

Mr. Weisman: What?

Mr. Haycraft: I do not think that ought to be smeared all over this record.

Mr. Weisman: If it is material, and if it will show the reason why, and I think it will show the reason why, because both this witness and I know something about this. I want to show that the reason why Blauner's would not co-operate with the Guild, and they had a perfect right not to do so if they did not see fit to do so, I want to show that, and I think I can show it if I am permitted to go along the line that I have set to do. I certainly have the right to ask a foundation question. If your Honor please, you certainly will recall that Mr. Haycraft wanders all over the face of the earth by the argument of asking a foundation question. I think I should be permitted to ask a legitimate foundation question once in a while.

5177

Mr. Haycraft: I object. All of this long stump speech, as Mr. Weisman himself characterized it, does not make it admissible.

Examiner Bennett: Overruled. You may answer.

*By Mr. Weisman.*

Q. The Court says you shall answer. A. What is the question?

5178

(Question read.)

A. No, sir.

Q. You do not know that? A. No, sir.

Q. Do you not know that Lombardy Frocks engages to a large degree in the manufacture of copies of higher-priced merchandise?

Mr. Haycraft: Same objection.

Examiner Bennett: Overruled.

A. No, sir.

*By Mr. Weisman.*

Q. You do not know that?

Mr. Haycraft: I object.

Examiner Bennett: Overruled.

A. What is that?

*By Mr. Weisman.*

5180

Q. You do not know that? A. No, sir.

Q. Do you not know that Lombardy Frocks is used by Blauner's for the purpose of obtaining through them copies of higher-priced merchandise at \$4.75? A. Absolutely not.

Q. You do not know that? A. No.

Examiner Bennett: From your knowledge, is it true?

The Witness: No, sir.

Examiner Bennett: No?

The Witness: It certainly is not true.

*By Mr. Weisman.*

5181

Q. Did you state that Lombardy Frocks does not engage in the buying and/or making of copies of higher-priced frocks; in the making of copies of higher-priced merchandise?

Examiner Bennett: He did not say that at all. He did not say that.

Mr. Weisman: I want to find out what he did say, Mr. Examiner.

Examiner Bennett: All right.

*By Mr. Weisman.*

Q. Does not Blauner's carry a lot of copies; a large amount of copies of pirated dresses? A. Blauner's, we buy dresses whether they are copies or not. I am not in a position to answer that.

Q. Have you not just stated that you did not want to join the Guild because you could not subscribe to the refusal to buy pirated dresses? A. Yes.

Q. So you wanted to have the right to go out and buy pirated dresses? A. We wanted to have the right to have an open market for merchandise wherever we could possibly get it without any restrictions.

Mr. Haycraft: I want to object to that. I do not think that the question is a correct interpretation of the witness' previous testimony.

Mr. Weisman: You know better than that. I am ashamed of you.

Mr. Haycraft: You are the one who should be ashamed.

Mr. Weisman: Now, will you sit down and quit yelling at me in such an undignified fashion? You are getting too old for such things, my lad.

Mr. Haycraft: Says you.

*By Mr. Weisman.*

Q. When you said that you meant you wanted to have the right to buy numbers whether or not they were pirated numbers or not; is that correct? A. That is right.

Q. What? A. That is right.

Q. You know, do you not, and you knew, did you not, at that time, that the Guild houses were the houses whose dresses were being pirated? A. Yes.

Mr. Haycraft: I object to that as calling for a conclusion of the witness.

Mr. Weisman: I think I ought to be allowed to get the answer to that.

A. No, sir; I do not know it.

*By Mr. Weisman.*

Q. Whose dresses do you think were being pirated when the Guild manufacturers said that they did not want to sell you unless you agreed not to carry copies of Guild members' dresses? A. Well, I suppose they were talking about—

Mr. Haycraft: I object. My objection is that there is no foundation for that question.

5186

Examiner Bennett: Read the question.

(Question read.)

Examiner Bennett: Overruled.

*By Mr. Weisman.*

Q. The Court says you may answer.

Mr. Haycraft: I object.

Examiner Bennett: I will sustain the objection.

Mr. Weisman: Exception.

Examiner Bennett: There has been no evidence received from this witness that anybody's dresses were being pirated. He hasn't testified to any such thing as that.

5187

Mr. Weisman: Your Honor, may I call your attention—may I see this? This is in evidence, isn't it (indicating paper writing)?

Mr. Haycraft: No, it isn't.

Mr. Weisman: Where is the one you put in evidence that you identified?

Mr. Haycraft: No, not that. You asked him the kind of declaration that he wanted to sign. I think that is it.

5188

*Louis Weinstein—For Commission—Cross.*

Mr. Weisman: So you see I was right.

Mr. Haycraft: Here it is.

Examiner Bennett: I have ruled on that. That wouldn't prove anything. I say this witness hasn't testified as to anybody's pirating.

Mr. Weisman: Well, this witness testified—

Examiner Bennett: You ask him and find out.

*By Mr. Weisman.*

Q. Didn't you testify that a copy of Commission's Exhibit 3-A was one that you had been asked to sign and you objected to it? A. I believe it is one of the papers.

5189 Q. Yes.

Examiner Bennett: That is not proof that dresses were being pirated, and it has not been testified to by this witness that dresses were being pirated.

*By Mr. Weisman.*

Q. When you were asked why you couldn't sign it, you stated that you couldn't sign it because you wanted to be free to handle pirated dresses; didn't you? A. No, sir.

Mr. Haycraft: No, he didn't say that.

Mr. Weisman: Didn't you say that?

The Witness: I didn't say anything at all about pirated dresses.

5190

Mr. Weisman: I am sure—

Mr. Haycraft: You did all of that talking.

Mr. Weisman: Don't say that, Mr. Haycraft. This witness said that he couldn't sign this because he wanted to be free to use pirated dresses, and I took it down.

Mr. Haycraft: He didn't say anything of the kind.



The Witness: Wanted to be free to buy merchandise in an open market without any restrictions.

*By Mr. Weisman.*

Q. Do you deny that on your direct examination you said, and used the term "pirated dresses"? A. Did not use the term "pirated dresses."

Mr. Weisman: All right. The record will show it.

Examiner Bennett: Yes.

*By Mr. Weisman.*

Q. I call your attention to Commission's Exhibit 3-A and call these words to your attention specifically: "We do not and will not buy for our ready-to-wear departments any copy or pirated dresses or garments created by members of your Association." Isn't that what you referred to on your direct examination? A. One of the clauses; yes, sir.

Q. Isn't that, in relation to that that you said you couldn't agree not to buy pirated dresses, to refrain from buying pirated dresses? A. Not to refrain.

Q. That is, that you didn't want to agree to refrain? A. That is right.

Q. Didn't you use those terms on your direct examination? A. The terms I did use have already been taken down.

Q. All right. In other words, you don't want to repeat them now. Didn't you know when this was presented to you that the only copies and the only pirated dresses that you were asked not to handle were copies, or pirated dresses of originations by Guild manufacturers? A. Not necessarily.

Q. Didn't you understand the English of this thing? A. Yes, sir.

5194

*Louis Weinstein—For Commission—Cross.*

Q. Well, by the terms of this didn't you understand that this was limited to copies or pirated dresses of members of the Guild? A. You asked me because it was brought up by the Guild.

Q. So that you knew that—so your failure to join the Guild could only be because of your unwillingness to refrain from dealing in copies of dresses originated by members of the Guild; isn't that so? A. One of the reasons.

5195

Q. Yes. I mean, there is no harm in it. I want you to know the Guild says you have a perfect right to do as you please. We are not charging you with any crime thereby, Mr. Weinstein. I don't want you to get the wrong impression. And you felt that you wanted to be free. I assume you felt you wanted to be free to deal with whomever you wanted, whether the dress was a copy or not; isn't that so? A. Yes, sir.

Q. And that is why you wouldn't join the Guild, isn't that so? Join in the Guild's policy with regard to style piracy? A. Yes.

Q. Are you familiar with the figures of Blauner's with 1935? A. No, sir.

Q. Do you know whether or not your \$10.75 department went ahead in 1936? A. I know—'36?

Q. Yes. A. Well, the \$10.75 was practically eliminated.

Q. Do you know whether or not Blauner's sales for the year—what is the total price range of Blauner's, by the way? A. What do you mean, "total price range"?

5196

Q. Where do they start? What is their lowest price range? A. Start at \$3.88.

Q. And go to? A. Go up to \$12.98.

Q. That is \$12.98 retail? A. Retail. Formerly \$14.95. Due to the fact that we had to drop out of the \$10.75 line; due to the fact that we had no open market from which to buy the kind of merchandise we were accustomed to handling, we probably—we had to drop out of that price range.

Q. Now, I understand that you said on your direct examination that in February, 1935, Joe-Mac Dresses refused to ship you? A. I couldn't remember that directly.

Q. Didn't you testify— A. I was selecting the names from the list that you subn.

Q. Well—the members—Mr. Haycraft asked you a question. He said in February, 1935, "Will you give a list of the Guild people who refused to do business with you?" Do you remember that? A. Yes.

Q. And you gave him these names: C. H. D. Robbins? A. That is right.

Q. And you meant him to understand, and the record to show thereby, did you not, that in February, 1935, C. H. D. Robbins refused to do business—

Mr. Haycraft: May I have an objection to that question, Mr. Examiner, so the record will be straight? The witness, in answering that question, testified that it was subsequent to February, 1935, and all through the year that these contacts were made, and that all of the dropping off was not in February, and I don't think in fairness he should be asked a question of this kind.

Mr. Weisman: I am trying to find out. You asked him one thing. If he answered another I would like to know what he answered.

The Witness: All right.

Examiner Bennett: All right. Overruled. You may answer.

By Mr. Weisman:

Q. The Court says you shall answer. A. All of these—all of the replacements that I made regarding to the purchases from those manufacturers was during the year beginning with February on through.

Q. Oh. But you didn't mean to fix that February as being— A. Was the stopping point.

5200

*Louis Weinstein—For Commission—Cross.*

Q. That was the stopping point? A. No, sir.

Q. Now, as a matter of fact, don't you know that the names that you mentioned didn't join the Guild until October or November? A. Those in the \$6.75 didn't join until October?

Q. Well, what is Lee Clair? A. Lee Clair is a \$10.

Q. When did you say Lee Clair joined the Guild? A. I really couldn't say.

Q. Would you deny that they joined it in November, 1935? A. I really couldn't say.

Q. Now, Will Zahn is no longer in the Guild? A. Yes, sir.

5201

Q. When do you say C. H. D. Robbins joined the Guild? A. I don't know when they joined the Guild.

Q. Well, when did you first have trouble getting merchandise from them? A. I can tell them when we stopped receiving merchandise from them.

Q. When you said in October— A. I would have to refer to that list.

Mr. Haycraft: Objected to.

*By Mr. Weisman.*

Q. Just take a look at when you stopped getting merchandise from them.

Examiner Bennett: We will recess for five minutes.

5202

(There was a short recess taken.)

A. We stopped receiving merchandise after or during the month of May, 1935, C. H. D. Robbins.

Q. Are you sure that you failed to get merchandise from them on that date, because they didn't want to ship you, or because on that date, on and until the fall you didn't place any further orders with them? A. We did want to place further orders and they refused to accept any further orders.

Q. You mean commencing with May? A. Approximately that time; yes, sir.

Q. Now, what about F. E. D. Dress? A. I don't have very much on that. F. E. D. Dress, there was no merchandise received after February, 1935.

Q. I don't care whether you received merchandise or not. I want to know— A. Well, I mean the fact that we didn't—well, that is as far as I can tell you. I mean, the record shows that we received no further merchandise after that.

Q. Do you know whether or not you didn't receive any merchandise because you didn't order from them or because they were members of the Guild? A. Well, I don't recollect it from that particular resource.

5204

Q. I see. What about F. & D. Beilinson. A. Beilinson.

Q. Yes. A. After August, 1935, we received no further merchandise due to the fact that they refused to accept orders for merchandise.

Q. Then you remember? A. Yes, sir.

Q. That was not until August? A. That is right.

Q. What about Joe-Mac Dress? A. I don't have any records of Joe-Mac Dress at all.

Q. You don't know when they refused to do business with you? A. No, sir.

Q. What about B. Tobias? A. B. Tobias, I have until, or after October, 1935.

Q. Do you know that if you got merchandise from them up to October, obviously they weren't members of the Guild? A. They may have been members of the Guild and still have shipped us due to the fact that we had a prior order.

5205

Q. I see. How much prior to delivery does Blauner's place its orders? A. Well, at that time I believe it was three or four weeks.

Q. As much as that? A. I think so.

Q. Is that your general practice? A. About three or four weeks at that priced merchandise.

Q. I see. Now, what about Lee Clair? A. Lee Clair was February, 1935.

Q. What was February, 1935? A. The last date of the receipt of merchandise.

Q. What is your recollection as to when they joined the Guild? A. They also—I don't know when they joined, but I do know that they refused to ship us merchandise on account of us not signing the agreement.

Q. When did they refuse? A. I have no exact figure—dating of that.

Q. What is your best guess? A. It would be futile to guess. It must have been approximately around that time.

Q. Suppose I tell you that Lee Clair didn't join the Guild until the latter part of October, 1935, what would you then say? A. Well, I told you before that I didn't recollect about Lee Clair.

Q. I see. Let me ask you this question: Assuming that your paper shows that between February and October, or thereabouts, you didn't get any orders or receive any merchandise from these people, and these people didn't join the Guild until on or October, wouldn't that be some indication to you that during that period you didn't want their merchandise? A. Well, these members that didn't join until October were members of the \$6.75 price division.

Q. And that has nothing to do with the Guild, has it? A. Well, they joined or became affiliated with the Guild.

Q. All the people that you have been talking about now are the \$10.75 people, aren't they? A. That is right.

Q. We weren't talking about \$6.75, the names that we have just gone over? Or are they \$10.75? A. That is right.

Q. Now, what I am asking you, and I assume you are going to be fair in your answer, as I am trying to be in my questions, if a man was not a member of the Guild, and he didn't ship you any merchandise from February to October, would that be because you didn't order any? A. That is right.



Q. And would the fact that you didn't order any be a reasonable indicia or sign that he wasn't carrying merchandise that you required? A. Not necessarily.

Q. Why else wouldn't you buy it? A. The period of the year as to whether we would buy merchandise from that particular manufacturer or the number of manufacturers would also have something to do with it.

Q. We have covered a long period, from February to October. A. That period includes seasonable changes. Naturally, the stocks change and you stop buying at a certain period, and you rebuy at other periods.

Q. Would you say that a source of supply from which you didn't buy merchandise for a period of seven or eight months at a time was a very important source of supply in a steady, staple business like Blauner's? A. No, sir.

5210

Q. I didn't hear your answer. A. No, sir.

Mr. Weisman: That is what I wanted to find out. That is all.

Examiner Bennett: Is there any redirect examination?

Mr. Haycraft: I don't believe there is anything further.

Mr. Weisman: That is all, Mr. Weinstein.  
(Witness excused.)

Examiner Bennett: What is your further pleasure?

Mr. Haycraft: I ask at this time, Mr. Examiner, that the hearings in this case be adjourned to convene again in Cleveland, Ohio, in the Grand Jury Room, 307, at the Post Office Building at the Public Square on Monday morning, 10.30 A. M., Eastern Standard Time.

5211

Mr. Weisman: May it please—

Examiner Bennett: 9.30 Eastern Standard Time.

Mr. Haycraft: Cleveland does not have Daylight Saving Time.

5212

*Proceedings.*

Examiner Bennett: It has Eastern Standard Time.

Mr. Weisman: May it please your Honor; we have been very laboriously engaged here. My client and I have been away from our regular business, and we are seeking to do everything to reasonably co-operate. We cannot return to our homes until to-morrow. I mean by that, for the business day to-morrow. To-morrow is a short day, being Saturday, and there is very little ability in us to conduct our business by reason of the fact that other people won't remain to conduct it with you. I ask your Honor most seriously, in view of the complete and thorough hearings that we have had continuously and consecutively this week, and so that my client and I may have at least twenty-four hours to do some other business, that the hearing be had on Tuesday morning so that we may have a business day to devote to our business.

5213

I make serious representation to your Honor that my client's business and affairs are seriously being injured by this absence. I realize that it is necessary that we be away. I make no point of that. What I do say that under the circumstances that we should be permitted to have a regular business day to bring ourselves up and to do such things as do require our immediate and urgent attention. I respectfully urge that upon your Honor.

5214

Examiner Bennett: I have already engaged a hearing room for that time.

Mr. Weisman: We will stand the cost of the hearing room.

Examiner Bennett: There isn't any cost.

Mr. Weisman: I didn't know that.

Examiner Bennett: But I would like to hear from the Commission's attorney on that point.

Mr. Haycraft: Well, I was hoping you would settle that. I will put it this way: I will be ready to proceed Monday with a witness, but I will not be seriously inconvenienced to have the hearing convene Tuesday.

Examiner Bennett: That is, you are indifferent?

Mr. Haycraft: Absolutely.

Examiner Bennett: You are indifferent?

Mr. Haycraft: Yes.

Examiner Bennett: Well, in view of that statement, I will accommodate counsel for the respondents, and we will meet on Tuesday.

(Whereupon, at 4 o'clock P. M., August 7, 1936, the hearing in the above-entitled matter was adjourned.)

5216

Court Room No. 307,  
Federal Building.

Cleveland, Ohio,  
August 11, 1936.

Met, pursuant to adjournment, 10.30 A. M.

Before: JOHN W. BENNETT, *Examiner*.

(Same Appearances.)

5217

PROCEEDINGS.

Examiner Bennett: Be in order, please. This is a reconvening of Docket No. 2769, the Federal Trade Commission v. The Fashion Originators Guild of America, Inc., et al. You may proceed.

Mr. Haycraft: Will you please take the stand at this time, Mr. Gutsche?

5218 *Hugo C. Gutsche—For Commission—Direct.*

HUGO C. GUTSCHE was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Examiner Bennett: What is the name?

The Witness: Hugo C. Gutsche.

*Direct examination by Mr. Haycraft.*

Q. Where do you live, Mr. Gutsche? A. 118 Yorkshire Road, Pittsburgh.

Q. Pennsylvania? A. Yes, sir.

5219 Q. What is your occupation? A. I am the ready-to-wear merchandise manager for the Upstairs Department of Joseph Horne Company, Pittsburgh.

Mr. Albert: If it please the Court, at this time I wish to object to any testimony whatsoever on the part of anybody from J. L. Horne & Company—

The Witness: Joseph—

5220 Mr. Albert: Joseph Horne & Company. It was announced in Philadelphia that the Commission would not proceed to Pittsburgh and that no testimony would be taken from Pittsburgh. As a result of that announcement of counsel for the Commission, the respondent at this time has none of its correspondence or any of the evidence that it would seek to present on cross-examination here with it, and it certainly is a most unfair bit of tactics on the part of the Commission not to warn us in any way that anybody would be brought up here from Pittsburgh to testify in Cleveland, and I strenuously object to any testimony whatsoever being presented from any Pittsburgh concern, in the light of the announcement of the Commission in Philadelphia.

Examiner Bennett: Yes. Well, you may get your correspondence. You may go forward. I will have the witness appear to-morrow for cross-examination.

Mr. Albert: Exception.

Examiner Bennett: Proceed—that is, unless the Commission wants to withdraw its witness.

Mr. Haycraft: No. I do not.

Mr. Albert: If it please the Court, I have just been informed that our papers were forwarded to Pittsburgh in expectation of a hearing being held in Pittsburgh, and that they have not as yet arrived back in New York.

Examiner Bennett: Can you not get them from Pittsburgh?

Mr. Albert: Beg your pardon?

Examiner Bennett: Can you not get them from Pittsburgh?

Mr. Albert: Well, they are probably in transit back from Pittsburgh to New York at the present time.

Examiner Bennett: Well, we will give you an opportunity to cross-examine after you get your papers. I wish you would be diligent about it, though.

Examiner Bennett: All right. Proceed.

*By Mr. Haycraft.*

Q. In what business is the Joseph Horne Company engaged? A. Department store business.

Q. How long have you been in your present position? A. About six years.

Q. What are your duties in that position? A. Well, merchandise manager, that is, the supervision of the buying and selling of the apparel.



5224

*Hugo C. Gutschie—For Commission—Direct.*

Q: Are you familiar with the Fashion Originators Guild of America, Inc.? A. Yes, sir.

Q. Where did you first learn of that organization? A. Well, I believe in December—December, 1932—I am not—there may have been some information prior to that, but I believe that is about the start.

(Photostatic copy of letter from Maurice Rentner, Chairman of the Board, Fashion Originators Guild of America, Inc., under date of March 23, 1932, to M. A. H. Burchfield, Joseph Horne Company, Pittsburgh, Pa., was marked for identification Commission's Exhibits 451-A and 451-B.)

5225

*By Mr. Haycraft.*

Q. I show you a paper which has been marked for identification Commission's Exhibits 451-A and B, purporting to be an original letter from Maurice Rentner, Chairman of the Board, Fashion Originators Guild of America, dated March 23, 1932, and ask you if you received that in the ordinary course of your duties? I notice it is addressed to Mr. A. H. Burchfield of Joseph Horne Company. A. I must have seen that. It was—

Mr. Albert: I cannot hear the witness here.

The Witness: I must have seen that.

Mr. Albert: I ask that the answer be stricken out, if the Court please; it is not in response to the question.

5226

Examiner Bennett: Read the question.

(Question read.)

A. Yes.

Mr. Haycraft: I offer it in evidence, Commission's Exhibits 451-A and B, and ask that a photostatic copy thereof be substituted for the



*Hugo C. Gutsche—For Commission—Direct.*

5227

original, as the Joseph Horne Company wishes to keep the original copies for their own files.

*y Mr. Haycraft.*

Q. By way of further identification, I will ask you who Mr. Burchfield is in your organization, mentioned in that letter? A. President of the firm.

Q. President of the firm? A. Yes.

Q. Is he your superior? A. Yes.

Q. There are certain pencil notations in the upper right-hand margin—

Mr. Albert (interposing): Mr. Haycraft—

5228

*y Mr. Haycraft.*

Q. I will ask you—

Mr. Albert: Well, Mr. Haycraft, would you mind holding your questions until I read this?

*y Mr. Haycraft.*

Q. I will ask you whether or not—just a moment, please. I will ask you whether or not those notations were made by Mr. Burchfield and addressed to you? A. May I see it again?

(The paper referred to was handed to Mr. Haycraft.)

The Witness: That is Mr. Oxenreiter's notation on there.

5229

*y Mr. Haycraft.*

Q. Oxenreiter? A. Yes.

Q. Who is he? A. Mr. Oxenreiter at the time was Mr. Burchfield's assistant.

5230

*Hugo C. Gutsche—For Commission—Direct.*

Q. I see.

(The paper referred to was handed to Mr. Albert.)

Mr. Haycraft: I renew my offer.

Mr. Albert: No objection, if it please the Court.

Examiner Bennett: Received.

Mr. Haycraft: I substituted a photostatic copy for the original.

Examiner Bennett: It is a letter; is it?

Mr. Haycraft: Yes, sir.

Examiner Bennett: All right. You may proceed.

5231

(Whereupon the paper previously marked Commission's Exhibit 451 for Identification was received in evidence.)

*By Mr. Haycraft.*

Q. I show you Commission's Exhibit 452 for Identification, which purports to be a carbon copy of a letter from Joseph Horne &amp; Company, an original to Fashion Originators Guild, dated March 29, 1932, in reply to the one that you have just identified, and ask if you can identify that as such?

5232

(Whereupon the carbon copy of a letter from Joseph Horne &amp; Company to Fashion Originators Guild, dated March 29, 1932, was marked Commission's Exhibit 452 for Identification.)

A. Yes.

*By Mr. Haycraft.*

Q. Was the original of that letter sent to the Fashion Originators Guild on March 29, 1932? A. Yes.

Mr. Haycraft: I offer that in evidence and ask that a photostatic copy may be substituted for the original.

*Hugo C. Gutsche—For Commission—Direct.*

5233

(Whereupon a letter from Fashion Originators Guild to Joseph Horne & Company, dated April 29, 1932, was marked Commission's Exhibit 453 for Identification.)

Mr. Albert: No objection.

Examiner Bennett: It may be received.

(Whereupon the letter heretofore marked Commission's Exhibit 452 for Identification was received in evidence.)

*By Mr. Haycraft.*

Q. I now show you Commission's Exhibit No. 453 for Identification, which purports to be an original letter from the Guild to Joseph Horne & Company, dated April 29, 1932, and ask you whether or not you received that original letter; that is, whether Joseph Horne & Company received it? A. Well, I think so.

5234

Q. I show you Commission's Exhibits 454-A to 454-M, inclusive, and ask if you can identify that as an original letter with certain documents attached received from Maurice Rentner?

The Witness: It is a letter addressed to me, signed by Maurice Rentner of the Fashion Originators Guild of America.

*By Mr. Haycraft.*

5235

Q. What date? A. December 16, 1932.

Q. Did you receive it? A. Yes.

Mr. Haycraft: I offer it in evidence.

Mr. Albert: May it please the Court, there is no objection with respect to Commission's Exhibits for Identification 454-A, B, C and D. However, with respect to 454-E to M, that is objected to upon the ground that it is a draft of proposed agreement

5236

*Hugo C. Gutschick—For Commission—Direct.*

which never went into effect, which was never signed by anybody, the terms of which were never operative in the industry and by reason whereof there is nothing whatsoever in the Commission's complaint with respect to it, and it is no purpose or function in this proceeding.

Examiner Bennett: I am overruling the objection and receiving it as part of the history of the Guild.

(The documents referred to, heretofore marked for identification Commission's Exhibits 454-A to 454-M, were marked as exhibits and received in evidence.)

5237

*By Mr. Haycraft.*

Q. I show you Commission's Exhibit 455-A and ask you to tell the Examiner what it is? A. It is a letter from the Fashion Originators Guild of America, dated June 19, 1933, addressed to me, signed by Maurice Rentner.

Q. Did you receive it? A. Yes.

(Letter from Maurice Rentner, Fashion Originators Guild of America, under date of June 19, 1933, was marked for identification Commission's Exhibits 455-A and 455-B.)

Mr. Haycraft: I offer it in evidence.

Mr. Albert: May I have that?

(Counsel hands exhibit to Mr. Albert.)

Examiner Bennett: That is Commission's Exhibits 455-A and B?

Mr. Haycraft: Yes.

Let the record show that if that record is received in evidence, that the docket section of the Commission will send to the witness the photostatic copy of the exhibit.

5238

Mr. Albert: No objection.

Examiner Bennett: Received.

(The letter referred to, heretofore marked for identification Commission's Exhibits 455-A and 455-B, were marked as exhibits and received in evidence.)

By Mr. Haycraft.

Q. I now show you the next to the last paragraph of this letter, Commission's Exhibit 455-B: "Our action is expressed in the enclosed resolution, which provides that all retailers who wish to have access to our showrooms and purchase our merchandise shall sign a 'Declaration of Good Faith,' a copy of which we are submitting herewith." I now show you Commission's Exhibits 456-A and 456-B and ask you if you can identify that?

5240

Examiner Bennett: That is for identification?

Mr. Haycraft: Yes, sir.

A. Yes, sir.

By Mr. Haycraft.

Q. What is it? A. A memorandum of the Guild's resolution and its significance.

Q. Dated when? A. Well, there is no date on this except that—except that these resolutions—or this resolution was passed unanimously at a meeting of the Fashion Originators Guild on Monday evening, June 12, 1933.

5241

Q. Was that enclosed in the letter you received from Mr. Rentner, Commission's Exhibit 455-A, and referred to in the language I read a moment ago in the last paragraph? A. Yes.

Q. Yes. I show you now Commission's Exhibit 457 for identification and ask you if you can testify as to what that is? A. That is the Declaration of Co-operation and Anti-Piracy.

5242

*Hugo C. Gutsche—For Commission—Direct.*

Q. Is that a copy of the one that you received from the Guild, enclosure of the letter of June 19, Commission's Exhibits 455-A and 455-B? A. Yes.

Mr. Haycraft: I offer this in evidence—wait a minute.

*By Mr. Haycraft.*

Q. And was that the original of which this is a copy signed by W. H. Burchfield, vice-president of the Joseph Horne Company and sent to the Guild? A. Yes.

5243

Mr. Haycraft: I will offer it in evidence and ask that a photostatic copy be substituted for the original.

(A document was there upon marked for identification Commission's Exhibit 458.)

Mr. Haycraft: Just a moment, Mr. Albert. I have another exhibit that ought to really go on with that.

*By Mr. Haycraft.*

Q. I show you Commission's Exhibit 458 for Identification, and ask if you can testify as to what that is?

Mr. Albert: Rather, if he knows what it is, your Honor, rather than testify what it is.

5244

A. It is a letter dated June 27, 1933, to the Fashion Originators Guild of America, signed by Mr. Burchfield, W. H. Burchfield.

*By Mr. Haycraft.*

Q. That is a carbon copy? A. Carbon copy.

Mr. Haycraft: I offer that in evidence, Mr. Examiner, and ask that a photostatic copy be substituted.



*Hugo C. Gutsche—For Commission—Direct.*

5245

tuted for the original, and I wish to make that offer along with Commission's Exhibit 457, taken together.

Examiner Bennett: Is Commission's Exhibit 457 objected to?

Mr. Haycraft: No. He hasn't yet objected to it.

Mr. Albert: No objection.

Examiner Bennett: They may be received. Commission's Exhibits 457 and 458.

(Copy of Declaration of Co-operation in Anti-Piracy was marked for identification Commission's Exhibit 457 and received in evidence.)

(Copy of letter from W. H. Burchfield, vice-president and general merchandise manager, Joseph Horne Company, under date of June 27, 1933, to Fashion Originators Guild of America, New York, N. Y., heretofore marked for identification Commission's Exhibit 458, was received in evidence.)

5246

(A document was thereupon marked for identification Commission's Exhibits 459-A and 459-B.)

*Mr. Haycraft.*

I show you Commission's Exhibits 459-A and 459-B, ask if you can identify it? A. Yes.

What is it? A. A letter dated November 8, 1935, addressed to Mr. W. H. Burchfield, care of Joseph Horne Company.

5247

Signed by whom? A. Signed by Mr. Post.

Now, Mr. Gutsche, during the period of time from 1933, until the present time, has Joseph Horne Company co-operated with the Guild as indicated in the correspondence I have just called to your attention and to which you have identified? A. Yes.

Mr. Albert: That is objected to as calling for the conclusion of the witness, and no foundation whatsoever has been laid showing the knowledge on the part of the witness with respect to what has been done by Joseph Horne Company over and above a period of three years.

Examiner Bennett: I think it best that you develop a foundation further to show just what this gentleman's duties were with the Joseph Horne Company.

Mr. Haycraft: I have a statement, Mr. Examiner, of his general duties.

*By Mr. Haycraft.*

Q. I will ask him if he had any peculiar duties with respect to the Guild.

Mr. Albert: May it please the Court, I object to any question with respect to "the peculiar duties" as regards the Guild. I don't know what "peculiar duties" means, and it certainly has an unpleasant connotation.

Examiner Bennett: I will hear what he has to say in response to the question.

Mr. Albert: Exception.

Examiner Bennett: Overruled.

A. I had no peculiar duties in connection with the Guild, Mr. Haycraft.

*By Mr. Haycraft.*

Q. Did you have any instructions from Mr. Burchfield as to what you were to do in co-operation with the Guild and the Guild's policies? A. Not that I remember.

Q. Did you ever hear of a warranty clause, a warranty statement, referred to in—

Mr. Albert: 306.

*By Mr. Haycraft:*

Q. —Commission's exhibit, in the last paragraph, where it says "Furthermore, we will affix to all of our orders the following clause: 'This order is placed upon the seller's warranty that the above garments are not copies of styles originated by members of the Fashion Originators Guild of America, Inc. The purchaser reserves the right to return any merchandise which is not as warranted.'" A. Yes.

Q. You know about that? A. Yes.

Q. What do you know about it? A. Well, I knew that as soon as that was signed we started to do that. It was in line with my general duties.

5252

Q. Had you been doing it before? A. Not before we signed the agreement.

Q. You had not been putting that warranty clause on garments before the agreement was signed? A. No, sir.

Q. Well, then, your general duties were changed somewhat after the signing of that agreement? A. Well, it was an addition, that is all.

Q. What steps did you take to see that that stamp went on orders placed for garments thereafter? A. That stamp was in our ready-to-wear office, and before the orders were sent out it was placed on copies of our orders.

Q. Who placed it on there? A. One of the clericals.

Q. Did you have anything to do with supervising the task? A. Well, the original instructions were given by me in our office.

5253

Q. Did you do anything to see whether or not they were carried out? A. I checked on it.

Q. Were they carried out? A. I believe so.

Q. Well, now, as a result of placing that stamp on all orders, did you find it necessary to return any garments to manufacturers? A. Occasionally.

5254

*Hugo C. Gutsche—For Commission—Direct.*

Examiner Bennett: We will take a recess of ten minutes.

(There was a short recess taken.)

*By Mr. Haycraft.*

Q. How did you determine when to make the returns?

A. We were informed by the Guild's local shopper.

Q. Who was she? A. Mrs. Elliott.

Q. When did she first shop your store? A. I cannot give the exact date. I imagine it was after the 1st of March or so.

Q. What year?

5255

Mr. Albert: What year was that?

A. 1935.

*By Mr. Haycraft.*

Q. Well, what would she do when she came to your store? What was her procedure? A. Well, she would have information confirming the fact that the dress in question was a copy.

Q. Well, you say she had the information, but what would she do, then, with that information? A. She would give it to us with a slip authorizing the return of the garment.

5256

Q. Did you take any steps yourself to determine whether it was a copy, in fact? A. No, we did not.

Q. Have you prepared for me, or had prepared, from the records of Joseph Horne Company, a statement of the garments returned in the year 1935, and up through the year 1936, showing the name of the manufacturer, the date of return, style number, quantity returned, and the price of the garment? A. To the best of our ability—

Examiner Bennett: Do I understand you to say that you returned no garments before March, 1935?

Mr. Haycraft: No, he did not.

The Witness: I am not sure about that.

Mr. Haycraft: Mark this for identification as Commission's Exhibit 460.

Examiner Bennett: Yes.

(Document referred to was marked for identification Commission's Exhibit 460.)

Mr. Haycraft: That is his testimony as to when he remembers the shopper came around. I will probably go into that a little bit more, Mr. Examiner.

*By Mr. Haycraft.*

5258

Q. I show you Commission's Exhibit 460 for Identification and ask you if you can identify that? A. Yes.

Q. What is it? A. This is a record of garments that we returned because they were copies.

Q. And the information contained thereon, where did it come from? A. It came from our records in combination with the records which we were able to obtain from the local Guild shopper.

Q. Are you satisfied it is correct? A. I wouldn't swear that it is complete. As near as we could get from the time that you were in Pittsburgh, and we had to work it out.

Mr. Haycraft: I offer this in evidence, Mr. Examiner.

5259

Mr. Albert: That is objected to, if it please the Court, on the ground that the witness has just testified that he would not swear to the fact that it is complete, and obviously the Commission does not want anything that is not a complete record and does not adequately show the facts.

Examiner Bennett: Is there anything on there that you did not return?

5260

*Hugo C. Gutsché—For Commission—Direct.*

The Witness: Not that I know of.

Examiner Bennett: Well, what is your best recollection of that?

The Witness: Sir?

Examiner Bennett: I say, what is your best recollection as to that, as to whether it contains any garments, or you know of any goods that are not, in fact, returned, as indicated?

The Witness: None that I remember.

Examiner Bennett: All right. Overruled; it may be received.

Mr. Albert: Exception.

5261

(Document referred to, heretofore marked for identification Commission's Exhibit 460, was marked as an exhibit and received in evidence.)

*By Mr. Haycraft.*

Q. Now, I notice the first date on this is February 21, 1935; I will ask you whether or not that refreshes your recollection as to the time that the shopper began to shop your store? A. I believe it was.

Q. You think it was on or about that date? A. Yes.

Q. Had you made any returns of garments to manufacturers prior to February, 1935? A. Yes, we had.

5262

Q. Well, how did you determine what garments to return prior to that time? A. We received notices from the Guild office giving the information as to the origination—or the originator of the garment and the manufacturer who had copied it, with his style number.

Q. How was that received? A. Sir?

Q. How did you receive that? That is, who gave it to you? How did you get it? A. It came through the store mail.

Q. I show you Commission's Exhibits 375, 376 and 377 and ask you if you recall those, or if you can testify with respect to them in any way? A. Not to these; I would not remember.



Q. I will ask you whether or not they are similar to the information which you received before the shopper began to call?

Mr. Albert: That is objected to, if it please the Court, as calling for a conclusion of the witness and no proper foundation has been laid. He does not know what these are, and yet he is asked to compare them with something that is not present.

Examiner Bennett: Sustained.

*By Mr. Haycraft.*

Q. Prior to June, 1933, the date of the signing of that original co-operation agreement, which you have identified, Commission's Exhibit 457, had you returned to the manufacturers any garments because they were copies of members of the Guild, or of any other manufacturer?

5264

Mr. Albert: That is objected to, if it please the Court, as being outside of the scope of the complaint, entirely immaterial and irrelevant. In addition, there is no proper foundation laid.

Examiner Bennett: Overruled.

Mr. Albert: Exception.

Examiner Bennett: He may answer.

A. I do not remember.

*By Mr. Haycraft.*

5265

Q. What was the policy of the store prior to that time, in that respect?

Mr. Albert: Prior to what time, if you please?

Mr. Haycraft: Prior to June, 1933.

A. Well, just a policy of ethical dealings.

5266

*Hugo C. Gutsche—For Commission—Direct.**By Mr. Haycraft.*

Q. I mean, with respect to returning to the manufacturers garments that were found to be copies of other manufacturers? A. Well, I don't recall.

Q. You do not recall any? A. We kept away from buying copies where we could; we were not in favor of buying copies at any time.

Q. Well, that was your general policy for a number of years? A. Yes.

Q. Prior to June, 1933, however, had you followed the policy of returning garments to manufacturers when you found that they were copies?

5267

Mr. Albert: That is objected to, if it please the Court, as entirely immaterial and not within the scope of the complaint.

Examiner Bennett: I have already ruled on that. Overruled. He may answer.

Mr. Albert: Exception.

A. I don't believe we returned any; it was impossible to do so, as I remember.

*By Mr. Haycraft.*

Q. You say it was impossible to do so? A. Yes.

Q. Why?

5268

Mr. Albert: That is objected to as calling for the conclusion of the witness, if it please the Court; no foundation laid.

Examiner Bennett: I will sustain it.

*By Mr. Haycraft.*

Q. Have you observed whether or not there was any effect on the dress business, sale of garments, in your department as a result of the co-operation with the Guild?

Mr. Albert: That is objected to, if it please the Court; no proper foundation has been laid; calling for the conclusion of the witness.

Examiner Bennett: What was the question?

(Question read.)

Examiner Bennett: Overruled.

Mr. Albert: In that relation, if it please the Court, there is nothing in evidence at the present time as to what department is referred to. There has been no evidence of any department as regards Joseph Horne & Company.

Examiner Bennett: Read the question again.

(Question again read.)

Examiner Bennett: Yes. Overruled. You may answer.

5270

Mr. Albert: Exception.

A. I haven't any definite figures on that.

*By Mr. Haycraft.*

Q. I asked you whether or not you had observed any effect. I didn't ask for any figures. I asked whether or not you had observed any effect upon the sale of garments in your department as a result of co-operating with the Guild. A. Not on the sale of garments.

Q. Have you observed any effect at all? A. Yes.

Q. What has been the effect you have observed? A. We have had less complaints from our customers.

5271

Q. As to what? A. When they bought a garment at a certain price, that it wasn't to be found at considerably lower prices in a copied garment.

Q. Couldn't be found where? A. In other stores.

Q. In other stores? A. Yes.

Q. Is that the only effect that you observed? A. I believe so.

Q. You have not observed any effect upon the volume of business done in your department? A. No.

Q. How many price lines of dresses do you have in your department? A. Well, they range from—according to the season of the year—as low as \$5.95 up to the top.

Q. Do you have any separate departments for the different price ranges? A. Yes.

Q. What are they? A. Sir?

Q. How are they divided? A. Well, at the top you come down to \$5.75, and from there down to about \$17.50, and then the third division.

Q. That is, from \$5.75 to \$17.50? A. Pretty close to that, yes.

Q. I just want to make sure that I understood your testimony correctly. As I understood it, you put the warranty stamp on all orders, including the low price as well as the high priced garments? A. Yes.

Q. And now I also want to make sure that I understand your testimony correctly, that as a result of this co-operation and what you have done, you have observed no effect upon either the better priced dress departments, or the lower popular priced?

Mr. Albert: If it please the Court, Mr. Haycraft understood the witness thoroughly. There is no possible claim that he could be misunderstood in the fact that he said there was no effect whatsoever on his volume. I think Mr. Haycraft has been in this trial long enough to understand when a witness says in plain answer to a very plain and simple question and there can be no other inference placed upon the repetition of that question other than an attempt to get a different answer from his own witness. I think it was perfectly plain. It was a simple question. He got a simple, straightforward, honest answer.

Examiner Bennett: Do you want to change your former statement in any way?

*Hugo C. Gutsche—For Commission—Direct.*

*W. E. Miller—For Commission—Direct.*

5275

The Witness: No, sir.

Examiner Bennett: All right. I will let it stand.  
I will sustain the objection.

W. E. MILLER was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

*Direct examination by Mr. Martin.*

Q. Mr. Miller, will you please state your name and address? A. W. E. Miller, 3024 Woodbury Road, Shaker Heights.

5276

Q. Now, what is your occupation, Mr. Miller? A. I am the ready-to-wear merchandise manager — merchandise manager of ready-to-wear and ready-to-wear accessories, William Taylor Sons & Company.

Q. In what business is William Taylor & Sons engaged? A. Retailer.

Q. They operate more than one store? A. No, one store.

Q. What type of merchandise do they handle? A. We handle all types of merchandise; that is, a general line and apparel for women, children, men and also home furnishing lines.

Q. Do you carry a full line of ladies' garments? A. We do.

5277

Q. What are your duties as divisional merchandise manager of ready-to-wear and ready-to-wear accessories? A. To supervise and work with the buyers and in all of their buying and selling operations.

Q. Do your duties include any buying itself? A. They do not.

5278

*W. E. Miller—For Commission—Direct.*

Q. Do you supervise the work of the buyers for your various departments? A. I do.

Q. Just what is your contact with the buyers? A. Well, it is a very close contact in this respect, that all of their buying and promotional operations are talked over with me.

Q. That is, before buying and after buying? A. That is correct.

Q. In other words, you consult with them before they do their buying and also afterwards, relative to the selling problems? A. And also relative to what they have purchased.

5279

Q. Do your buyers have anything to do with the sales in their respective departments? A. Yes, they do.

Q. If so, what are their duties, relative to sales, in their particular departments? A. It would be their responsibility to dispose of the merchandise after it is bought.

Q. Now, in the regular course of your business as divisional merchandise manager of ready-to-wear and ready-to-wear accessories, and in the course of the supervision of the buyers who work under you, do you, from time to time, make checks to determine what is the trend of business in your particular departments? A. Yes, continually.

Q. Now, Mr. Miller, have you ever heard of an organization called the Fashion Originators Guild of America, Inc.? A. I have.

5280

Q. Do you recall when you first heard of it? A. The first time I recall of having heard of it was in the spring of 1933; that is, there is correspondence prior to that time, but I was not there.

Q. When did you, and by "you" I mean your employee, join or signify your intention to co-operate with the Fashion Originators Guild?

Mr. Albert: That is objected to, if it please the Court, as calling for testimony not as yet in evidence; no proper foundation has been laid.



*W. E. Miller—For Commission—Direct.*

5281

Mr. Martin: All right. I withdraw the question.

*By Mr. Martin.*

Q. Have you ever signed a declaration of co-operation in anti-piracy, signifying that you would co-operate with the Fashion Originators Guild?

Mr. Albert: That is objected to upon the ground that no proper foundation has been laid, and calling for the conclusion of the witness.

Examiner Bennett: All right, overruled; you may answer.

5282

A. I have not personally signed.

*By Mr. Martin.*

Q. By "you" I mean the store. A. The store did sign it, yes.

Q. When did the store sign such a declaration?

Mr. Albert: That is objected to; the declaration is the best evidence of the date of the signing.

Examiner Bennett: Overruled; you may answer.

Mr. Albert: Exception.

A. In June, 1933.

*By Mr. Martin.*

5283

Q. In June, 1933. Now, from the time that Taylor's signed the declaration of co-operation in June, 1933, down to April of 1936, did Taylor's in any way, co-operate with the Guild in its activities? A. We did.

Q. In what way did you co-operate? A. We attempted to live up, to the best of our ability, to the clauses of the agreement that we had signed. We placed—

5284

*W. E. Miller—For Commission—Direct.*

Q. Go ahead. A. We placed the warranty stamp as specified in that document of co-operation on all orders that were placed.

Q. Did you place the Guild warranty stamp on all orders? A. We did.

Q. Did any manufacturers refuse to accept orders because they contained this Guild stamp?

Mr. Albert: That is objected to, if it please the Court. He has personally testified he had nothing to do with the buying of the dresses, that he was reported to only through his buyers.

(Question read.)

5285

A. We have two instances that I know of definitely that that was done.

*By Mr. Martin.*

Q. In what price field were those manufacturers, if you know? A. \$4.75 cost.

Q. Does the Fashion Originators Guild maintain a shopper in Cleveland? A. They do.

Q. Do you know her name? A. Yes, Mrs. Joseph.

Q. Who? A. Mrs. Joseph.

Q. Have you ever met her, or do you know her personally? A. I have met her in the course of business.

5286 Q. Have you ever encountered her in the performance of her duties in your store? A. Yes.

Q. What was she doing? A. She had brought in information that had been forwarded to her from the Fashion Originators Guild, New York office, with reference to copies of dresses, and had located those copies in our stocks, and was calling it to our attention.

Q. Did she ever request you to return goods to the manufacturer? A. Occasionally.

Q. Is your ready-to-wear business divided into departments? A. Yes.

Q. What are those departments? A. In dresses?

Q. Yes, with reference to dresses? A. We have a department for women's dresses retailing at \$12.95 and up; we have a department for misses' dresses retailing at \$12.95 to \$29.95; we have a department for misses' dresses retailing at \$29.95 up as a duplication price line; we have a budget dress shop.

Mr. Albert: What was that last one?

Mr. Feldman: Budget.

The Witness: Budget. Budget dress shop, in which we carry dresses retailing at \$6.95 through \$10.95, and we have junior dresses which are included with junior coats at all prices, and we have sport dresses, which are included in our General Sportswear Department.

5288

By Mr. Martin.

Q. Do you recall when the Fashion Originators Guild shopper was appointed in Cleveland? A. We had a letter from Mr. Golby to that effect, I believe, dated February 25, 1935.

Q. Was your store ever red carded by the Fashion Originators Guild? A. It was.

Q. Do you recall when? A. Early in February of this year.

Q. Do you recall the reason for being red carded? A. We were never given a definite reason.

5289

Q. What, briefly, was your first knowledge that you had that your store had been red carded? A. It came to us through "Women's Wear."

Q. Did the Fashion Originators Guild notify you directly that you had been red carded? A. No.

Q. What other notice—

Mr. Albert: Was there an answer to that question?

5290

*W. E. Miller—For Commission—Direct.*

The Witness: No.

Mr. Martin: Yes. He said "no."

*By Mr. Martin.*

Q. What other notice besides reading it in "Women's Wear" did you get that your store had been red carded?

A. We were informed by manufacturers when we went into the market.

Q. What did you do when you got notice of being red carded, if anything? A. I don't believe I quite understand your question.

5291

Q. Well, let me see if I can change it. You have testified that the first notice that you had of being red carded was reading it in "Women's Wear"? A. (Witness nods head affirmatively.)

Q. Following that, what action did your store take, if any? A. We sent our buyers into the market to find out what the situation was.

Q. Were your buyers denied access to Guild manufacturers, and by that I mean did Guild manufacturers refuse to display their lines to your buyers? A. Yes, they did.

Q. Can you testify as to the names of any of the buyers who were refused access by Guild manufacturers? A. The names of the buyers?

5292

Q. Yes. A. Yes. Mrs. Williams, our misses' dress buyers, and Mrs. Howard, our women's dress buyer.

Mr. Albert: May I have the last answer?  
(Answer read.)*By Mr. Martin.*

Q. Do you recall what manufacturer refused them access? A. There were a number of them. I recall a few. Rosen, Brothers is one, International Dress, Bender &amp; Hamburger, Milton Altmark; Feigenbaum &amp; Edelson.

W. E. Miller—For Commission—Direct.

5293

Mr. Albert: What was that last one?

The Witness: Feigenbaum & Edelson. Willie Bass. Those are all that I recall without refreshing my memory. If I could see a list perhaps I could tell you more.

Mr. Martin: Mark this.

(A document was thereupon marked for identification Commission's Exhibit 470.)

By Mr. Martin.

Q. I hand you Commission's Exhibit 470 for Identification, and ask you if you can identify that? A. Yes, I can.

Q. What is it? A. It is a list of the Guild manufacturers with whom we did business in 1935 and early spring 1936.

5294

(Commission's Exhibit 470 for Identification was handed to Mr. Albert.)

Mr. Albert: That is objected to at the present time, if it please the Court, on the ground that there has been no proper foundation laid with respect to the accuracy of this list. The witness hasn't testified as to anything whatsoever with respect to it.

By Mr. Martin.

Q. Who prepared this list, Mr. Miller? A. I did.

Q. You did not, you say? A. I did.

5295

Q. You did. Do you know of your own knowledge that this is a list of the Guild houses from whom purchases were made during 1935 and the spring of 1936? A. I do.

Mr. Martin: I offer that in evidence, your Honor.  
Examiner Bennett: Received.

(The list referred to, heretofore marked for identification Commission's Exhibit 470, was marked as an exhibit and received in evidence.)

5296

*W. E. Miller—For Commission—Direct.*

Examiner Bennett: Objection overruled.

Mr. Albert: Exception.

Mr. Martin: Mark this.

(A document was thereupon marked for identification Commission's Exhibit 471.)

*By Mr. Martin.*

Q. I hand you Commission's Exhibit 471 for Identification, and ask you if you can identify that? A. I can.

Q. What is it? A. It is a list of the purchases that were made in dollars of costs from Guild manufacturers during the period February 1, 1935, to February 1, 1936.

5297

Q. Did you prepare that list? A. It was prepared under my supervision and at my request.

Q. It was prepared under your supervision and at your request? You are satisfied that that is a correct statement? A. Right.

(The document was handed to Mr. Albert.)

Mr. Albert: This is objected to upon the ground that no proper foundation has been laid, if it please the Court.

Mr. Martin: I offer this in evidence, your Honor.

Examiner Bennett: Overruled. Received.

Mr. Albert: Exception.

(The list referred to, heretofore marked for identification Commission's Exhibit 471, was marked as an exhibit and received in evidence.)

5298

*By Mr. Martin.*

Q. Now, Mr. Miller, you have testified that your store was red carded about the middle of February of this year. At the time that your store was red carded, did you have outstanding any orders for goods with manufacturers who were members of the Guild? A. Yes, we did.



Mr. Martin: Mark this.

(A document was marked for identification Commission's Exhibit 472.)

*By Mr. Martin.*

Q. I hand you Commission's Exhibit 472 for Identification, and ask you if you can identify that? A. Yes.

Q. What is it? A. It is a list of the outstanding orders at cost at the time that we were red carded.

Q. Was that prepared by you or under your supervision? A. It was prepared by me and under my supervision.

Q. You are satisfied as to the correctness of it? A. 5300  
I am.

Mr. Martin: I offer this in evidence, your Honor.  
(The paper was handed to Mr. Albert.)

Mr. Albert: That is objected to, if it please the Court, as being incompetent, no proper foundation having been laid.

Examiner Bennett: Overruled: Received.

(The document referred to, heretofore marked for identification Commission's Exhibit 472, was marked as an exhibit and received in evidence.)

*By Mr. Martin.*

Q. Now, I will ask you, Mr. Miller, were any of these 5301  
orders which are shown on Commission's Exhibit 472 to have been outstanding with Guild manufacturers at the time your store was red carded ever filled subsequently to the red carding? A. They were not.

Q. Since the time you were red carded in February of 1936, have you ever been able to buy any garments from Guild manufacturers from whom you had been buying previous to being red carded?

5302

*W. E. Miller—For Commission—Direct.*

Mr. Albert: Now, if it please the Court, I think we have come to the time when Mr. Martin should refrain from asking leading questions. Up to the present time I haven't objected to the leading questions as a time saver, but I believe that we are now getting to information that may be very, very vital, and specific, and I suggest that he be admonished not to lead the witness. The question is obviously a most leading question.

Mr. Martin: I disagree with my friend, your Honor. I think that the question is entirely proper. I asked him a question which can be answered either "yes" or "no."

5303

Mr. Albert: Which is the hallmark of a leading question on direct examination, your Honor.

Mr. Martin: I think that the question is perfectly proper, wholly competent and relevant.

Examiner Bennett: Let me have the question.  
(Question read.)

Examiner Bennett: Overruled. You may answer.

Mr. Albert: Exception.

A. No, we have not.

*By Mr. Martin.*

5304

Q. When did you last attempt to do so? A. Within the space of one week after we were red carded.

Q. Now, Mr. Miller, in what price range did you buy dresses from F.O.G.A. manufacturers? A. At the time—

Q. That is, I am speaking of prior to being red carded, of course. Prior period. A. From \$6.75 cost up.

Q. In what price range were the bulk or the majority of your dresses bought?

Mr. Albert: That is objected to as calling for the conclusion of the witness; no proper founda-

tion having been laid; no testimony here as to the ability of the witness to give us that estimate.

Mr. Martin: If your Honor please, he has testified that he has been in full and complete charge of the ready-to-wear division, and in supervision of the same, and as such has full knowledge of the activities of that department.

Mr. Albert: Without meaning any disrespect toward the witness, your Honor, if we are to judge his ability to testify from the mere fact that he has testified that he is divisional merchandise manager, from our experience with divisional merchandise managers in Boston and Philadelphia, I think he is perfectly incompetent to say anything whatsoever about it.

5306

Mr. Martin: If your Honor please, possibly because divisional merchandise managers in Boston and Philadelphia didn't give the answers my friend would have liked them to have given——

Mr. Albert: I don't think they gave any answers, your Honor.

Mr. Martin: I still contend that it is not relevant to this gentleman's testimony. He has testified as to his position and as to his duties.

Mr. Albert: If it please the Court, I don't think that the mere fact that he has stated that he is a divisional merchandise manager, in the light of your experience with divisional merchandise managers, does not cast any halo on his ability to testify as to what he is asked right now, and no foundation whatsoever has been laid for it. At least, I will say this much, he hasn't passed it on to his subordinates as yet, but before that happens I would like to know as to his ability to testify about it.

5307

Examiner Bennett: Let us have the question.

5308

*W. E. Miller—For Commission—Direct.*

Mr. Albert: Because, if you may remember, we let in a lot of evidence from others on the ground that we would get to the real facts from their subordinates, and then when we got to the subordinates we were thrown out altogether.

Examiner Bennett: What was the question that is pending?

(Question read.)

Examiner Bennett: Do you know?

The Witness: Yes, I do.

Examiner Bennett: All right. You may answer.

Mr. Albert: Exception.

5309

A. \$10.75 through \$16.75 cost.

Mr. Albert: \$10.75 what?

The Witness: \$10.75 through \$16.75 cost.

*By Mr. Martin.*

Q. Do you know how long Guild membership has included manufacturers in the brackets under \$10.75? A. Yes.

Q. How long have they included—

Mr. Albert: Same objection.

*By Mr. Martin.*

5310

Q. —those? A. The fall of 1935.

Q. Now, Mr. Miller, you have named various departments of your dress business, women's dresses, misses' dresses, women's dresses at \$12.95 up retail, misses' dresses \$12.95 to \$29.95 retail, misses' dresses \$29.95 up retail, Budget Shop, which includes women's and misses' inexpensive dresses. \$6.95 to \$10.95 retail, the junior dress and coats and the sportswear. Do all of those departments handle Guild merchandise? A. They did.

Q. They did. I mean, prior to being red carded, did all of those departments handle Guild merchandise? And the answer? A. Yes. Right.

Q. Have you made any study of your business to determine the effect of being red carded on your store?

Mr. Albert. That is objected to, if it please the Court. No foundation having been laid. Being entirely irrelevant and a matter of conjecture, the effect on the business of the store of red carding. We are now pretty far afield.

Examiner Bennett: Overruled. You may answer.

A. We have:

Mr. Martin: Mark this.

(A document was thereupon marked for identification Commission's Exhibit 473.)

By Mr. Martin:

Q. I hand you Commission's Exhibit 473 for Identification and ask you can you identify that? A. I can.

Q. What is it? A. It is a record showing the volume increases or decreases by months through February, through June of this year, for the total store for each of the departments mentioned by you and for the total better dress departments, which constitute women's, misses', women's and misses' better dresses.

Q. Was this prepared by you under your supervision?

A. Prepared by me.

Q. Are you satisfied as to the correctness of it? A. I am.

Q. Of the exhibit?

5314

*W. E. Miller—For Commission—Direct.**By Mr. Albert.*

Q. Mr. Miller, with respect to Commission's Exhibit No. 473, can you testify definitely and specifically with respect to the figures therein contained? A. Yes, I can.

Q. Can you testify definitely and specifically with respect to the various factors that led either to an increase or decrease in the various departments? A. I believe so.

Q. Can you testify from first-hand knowledge with respect to the component departments that make up the total store estimates of advances or decreases? A. I am sorry. I didn't get your question.

5315

Q. Can you tell us specifically what departments were considered in reaching the figure with respect to the total store as contained in Commission's Exhibit 473? A. Yes. Yes.

Q. Have you the figures with respect to all other departments? A. I have at my access.

Q. Of the store? A. Right.

Q. Have you the figures for 1935? A. I have.

Q. The specific figures? A. I have.

Q. Can you further identify these department numbers with—

Mr. Martin: I will get to that.

Q. (By Mr. Albert) With the particular department that you have testified to? A. I can.

5316

Q. How did you obtain these figures? How did you reach them? A. Obtained them from the records.

Q. Well, what specifically, do they represent? A. They represent the percentage either of increase or decrease of sales of that period.

Q. Did you take those off the sales slips? A. Took them off of the annual summary of sales.

Q. You haven't any annual summary of sales for 1936 yet, have you? A. I have the monthly summaries. I began



your pardon. They are monthly summaries taken from each month's report. I am sorry.

Q. Does this represent volume of units sold, or does it represent— A. It represents—

Q. —dollar value? A. Dollars.

Mr. Albert: I renew my objection, if it please the Court, upon the ground that—

Examiner Bennett: Overruled. Received.

Mr. Albert: Not subject to computation.

(The document referred to, herefore marked for identification Commission's Exhibit 473, was marked as an exhibit and received in evidence.)

5318

By Mr. Martin.

Q. Mr. Miller, referring to Commission's Exhibit 473, I notice on the first line is marked "Total Store" and in the first column there is a figure 37.02. What does that— just explain that figure, what it means.

Mr. Albert: Have you got another copy?

Mr. Martin: No.

Mr. Albert: Do you mind if I look over your shoulder?

Mr. Martin: No.

A. It means the increase in volume for the total store in dollars this year over last year for the month of February.

5319

By Mr. Martin.

Q. And I suppose the figures under March, April, May, and June in that same line refer to this same thing? A. They do.

Q. Now, Department 330, what department is that?

A. That is women's dresses, \$12.95 and up.

5320

W. E. Miller—*For Commission—Direct.*

Q. Department 335? A. Misses' dresses, \$39.95 and up.

Q. Department 350? A. Misses' dresses, \$12.95 to \$29.95.

Q. Department 360? A. Budget dresses, women's and misses', \$6.95 through \$10.95.

Q. Department 371? A. Junior dresses and coats.

Q. Department 380? A. Sports wear.

Q. In the first column marked "February," under Department 330, there is in parentheses—there are in parentheses the figures 5.73. What does that mean? A. That is the same as red figures. It means a decrease.

5321

Q. Do I understand that all figures in the exhibit which are included in parentheses means decreases? A. That is correct.

Q. And figures that are not in parentheses mean increases? A. That is correct.

Q. Now, on the bottom line there is a heading, "Total Better Dresses, Departments 330, 335 and 350," and under the month of February there are the figures 22.7. What does that mean? A. It means in the sum of those three departments we showed an increase for the month of February in dollars over last year of 22.7 per cent.

Q. And in the next column what does that show? A. That shows a 1.1 per cent. decrease for the same departments over the same period.

5322

Q. And in the next column, April? A. That shows a 20.2 decrease for the same departments this year as against last year for the month of April.

Q. And in the column marked "May"? A. That shows a 31.2 increase.

Q. And in the column marked "June"? A. A 14.7 increase.

Q. Can you explain the fact that in the month of March and in the month of April there were decreases, while in the months of May and June those three departments showed an increase?

Mr. Albert: That is objected to, if it please the Court. There is no proper foundation laid, calling for the conclusion of the witness, and the exhibit speaks for itself.

Examiner Bennett: Overruled. You may answer.

Mr. Albert: Exception.

Examiner Bennett: The question is whether you can explain it.

*By Mr. Martin.*

Q. Can you explain that? A. Yes.

Q. What is your explanation?

5324

Mr. Albert: Same objection.

Examiner Bennett: Overruled.

A. The month of March, from a study of our unit control record, the month of March we found that certain price lines in which we were strongest in our purchases were Guild houses showed radical decreases for the months of March, for the month of April; for the months of May and June we dropped down in our prices in those same departments so that we dropped below the price lines in which we were greatest affected. Consequently, we were able to show better results in May and June, proportionately, than we were in March and April.

Q. Now, referring to the exhibit, what did the total store show for the month of February, 1936, as compared with the same month of 1935? A. The total store?

5325

Q. Yes. A. 37.02 per cent. increase.

Q. What did the total better dress show for the same month? A. 2.7 per cent. increase.

Q. Now, referring to the month of March, what did the total store show for the month of March, 1936, as compared with the month of March, 1935?

Mr. Albert: If your Honor please, now that the figures have been explained as to the various significances of them, all he is doing is reading them off from the record.

Mr. Martin: Well, to save time I will withdraw that.

Examiner Bennett: All right.

*By Mr. Martin.*

Q. Now, you have testified that the lower-priced manufacturers became members of the Guild in the fall of 1935?

5327

Mr. Albert: That is objected to, if it please the Court. There is no such testimony.

Mr. Martin: All right.

Mr. Albert: The witness did not testify as to that.

Mr. Martin: I think he did, your Honor.

Mr. Albert: He testified that they were members of the Guild during all of 1935.

Examiner Bennett: Will you read the question? (Question read.)

Examiner Bennet: Yes.

*By Mr. Martin.*

5328

Q. Prior to that time where did you buy your lower-priced garments? A. I am sorry. I don't understand your question.

Q. Prior to the early fall of 1935 when the lower-priced manufacturers became members of the Guild, from whom did you buy your lower-priced garments?

Examiner Bennett: From what class of manufacturers?

By Mr. Martin.

Q. From what class of manufacturers? A. From manufacturers who were organized in the market to produce that market.

Q. Were they Guild or non-Guild members—manufacturers? A. They were non-Guild manufacturers up until the time they became members of the Guild.

Q. And did you, during this period of the fall of 1935, use the Guild warranty stamp on orders for lower-priced goods? A. We did.

Q. Can you testify as to when you were first called upon to return merchandise to the manufacturers? A. Not the exact date, no.

5330

Q. Approximately? A. It was prior to the employing of the shopper in Cleveland, that is all I can tell you. Up to that time we had been informed of copies by letter and telegrams that it was urgent.

Examiner Bennett: Have you some further direct examination, Mr. Martin?

Mr. Martin: I think I have quite a bit more, your Honor. It is after 4.30, and—

Examiner Bennett: Yes. Well, I think we best adjourn until to-morrow morning.

Mr. Martin: All right, sir.

The Witness: 10 o'clock to-morrow morning?

Examiner Bennett: 10 o'clock to-morrow morning at this place.

5331

(Whereupon, at 4.30 o'clock P. M., August 11, 1936, the hearing was adjourned.)

5332

*W. E. Miller—For Commission—Direct.*

Court Room No. 307,  
Federal Building,  
Cleveland, Ohio,  
August 12, 1936.

Met, pursuant to adjournment, 10 A. M.

Before: JOHN W. BENNETT, Examiner.

APPEARANCES:

R. J. MARTIN, Esq., appearing for the Federal Trade Commission.

5333

M. A. ALBERT, Esq., GEORGE FELDMAN, Esq., and HERBERT S. KELLER, Esq., appearing for the Fashion Originators Guild of America, Inc.

PROCEEDINGS.

Examiner Bennett: You may resume the stand, Mr. Miller.

W. E. MILLER resumed the stand and testified further as follows:

*Direct examination by Mr. Martin.*

5334

Q. Now, Mr. Miller, what percentage of the dresses in your women's and misses' ready-to-wear departments were purchased from Guild sources?

Mr. Albert: Objected to, if it please the Court. No proper foundation has been laid.

Mr. Martin: Perfectly good foundation has been laid. It does not need any argument on my part.



Examiner Bennett: I think the record already shows that he has made an investigation of that particular situation. Go ahead and answer, if you know.

A. We have studied our records, and from the indication from the records of purchases from Guild houses compared with other purchases in those price lines, we have estimated it runs between 60 and 75 per cent., depending upon the departments.

By Mr. Martin.

Q. Depending upon the departments? A. Depending upon the departments. 5336

Mr. Albert: I move the answer be stricken out. It is not responsive to the question. The question was with respect to a specific department, not general.

Mr. Martin: If your Honor please, the question was as to his women's and misses' dress departments. His answer that it was from 60 to 75 per cent., varying with the different departments.

Examiner Bennett: Yes. He spoke of price lines. I wish you would develop that, what he means.

Read the answer.

(Answer read.)

By Mr. Martin.

Q. Just what do you mean, Mr. Miller, by saying, compared with other goods in the same price lines? A. I have reference to the price lines covered by Guild houses.

Q. Do you mean by that that in the price lines covered by Guild houses you also bought some merchandise from non-Guild houses? A. I do.

5338

*W. E. Miller—For Commission—Direct.*

Q. Now, Mr. Miller, your store, did it at all times co-operate with the Guild in its activities? A. It did.

Mr. Albert: May we have a time fixed, if the Court please.

*By Mr. Martin.*

Q. During the time it was a member of the Guild, during the time of its affiliation, or from the time of signing the Declaration of Co-operation until you were red carded, did you at all times co-operate? A. We did.

5339

Q. Did you ever refuse to return any garments when requested?

Mr. Albert: May it please the Court, there is no testimony so far that they have been requested to return any.

Mr. Martin: I think there was from his testimony yesterday—

Examiner Bennett: That is my recollection.

Mr. Martin: —to that effect.

*By Mr. Martin.*

Q. You may answer. A. Yes, we did co-operate. We did not refuse to return any garments.

(A document was thereupon marked for identification "Commission's Exhibit 474.")

5340

*By Mr. Martin.*

Q. I hand you Commission's Exhibit 474 for Identification, and ask you can you identify that? A. Yes, I can.

Q. Will you describe it, please?

Mr. Albert: May it please the Court, I object to any description of anything that is not in evidence.

Mr. Martin: Well, let him say what it is.

A. It is a telegram addressed to the Fashion Originators Guild of America.

By Mr. Martin.

Q. From whom? A. From six stores in Cleveland.

Q. Were you one of those six stores? A. We were.

Mr. Martin: I offer this in evidence as Commission's Exhibit 474.

Mr. Albert: No objection.

Examiner Bennett: Received.

(Telegram referred to, heretofore marked for identification "Commission's Exhibit 474," was marked as an exhibit and received in evidence.) 5342

By Mr. Martin.

Q. Now, Mr. Miller, have you made any study to determine the effect upon your store of being red carded? A. We have.

Q. What has been the effect of red carding so far as your ability to purchase ladies' and misses' garments?

Mr. Albert: That is objected to, if the Court please. There has been no foundation laid. I would like to know what his study has been before I accept his conclusions of an opinion as to what the effect has been. He may have studied the Cleveland "Press" or "Daily Dispatch" or New York "Journal" to find out what the effect has been. 5343.

Examiner Bennett: I think that is a matter for cross-examination.

Mr. Albert: May I point out I would like to know beforehand so it does not go into the evidence. We can save a lot of time. He may be perfectly unqualified to give his opinion on it. Why should that evidence go into the record with the

5344

*W. E. Miller—For Commission—Direct.*

effect upon the record and then have it stricken out if he is unqualified to testify on it?

Examiner Bennett: Read the question.

(The question was read.)

A. We have been unable to purchase from resources with whom we had done a sizeable volume of business.

Q. What has been the effect of red carding so far as the good will of your customers is concerned? A. We have been unable to furnish the same type of merchandise that we had before.

5345

Q. What has been the effect on your store so far as your competitive standing with other merchants engaged in the same line of business in Cleveland—

Mr. Albert: Now, if it please—

Q. (Continuing) —is concerned?

5346

Mr. Albert (continuing): If it please the Court, there has been absolutely no foundation laid for this particular question. There has been no evidence whatsoever as to what investigation he has made of the competitive practice in Cleveland, of what the other stores have been doing, or what they have customarily been doing of a contrast between the volume of Taylor's and the other stores; and there has absolutely been no foundation laid for his giving his opinion. With all due respect, I think the stenographer is just as capable of giving an opinion, as far as the record is concerned, as this witness is at the present time. We are having opinions taken out of the air here.

I think we found in the past that being a divisional merchandise manager doesn't clothe a person with knowledge.

Mr. Martin: I thought you admitted yesterday that this particular divisional merchandise manager knew what he was talking about. I thought I heard you make that remark as you went out of the court room yesterday.

Mr. Albert: I may have made a remark that I was thankful that he hadn't been appointed divisional merchandise manager on February 1st of 1936.

Examiner Bennett: I will ask the witness a question here: I will ask the witness a question which may settle this debate.

*By the Examiner.*

5348

Q. Is it part of your job to keep yourself informed on competitive conditions in your line in Cleveland? A. Yes, it is.

Q. Do you keep yourself informed? A. Yes, I do.

Examiner Bennett: All right. Go ahead.

Mr. Albert: May I ask a question, if it please the Court?

Examiner Bennett: Yes, if you want to.

*By Mr. Albert.*

Q. In what way do you keep yourself informed, Mr. Miller? Just exactly what do you do? A. Shopping other stores continuously.

5349

Q. In what way do you shop them?

Examiner Bennett: I think that is cross-examination, proper cross-examination. I will shut it off right here.

Mr. Albert: Exception.

Mr. Martin: You may answer, Mr. Miller.

The Witness: May we have the question again?

5350

W. E. Miller—For Commission—Direct—Cross.

Mr. Martin: Will you read the question back to him?

Examiner Bennett: Read the question.

The question was read by the reporter as follows: "What has been the effect on your store so far as your competitive standing with other merchants engaged in the same line of business in Cleveland is concerned?"

The Witness: They have had access to the best houses in the market and we haven't.

*By Mr. Martin.*

5351

Q. Have you had to replace the lines which you formerly handled with other sources of—from other sources of supply? A. We have.

Q. Do you consider the sources of supply now available to you of equal standing with your former sources of supply? A. No.

Q. Have you been unable to supply your customers with the former grade of merchandise which you formerly handled? A. I don't understand what you mean by "grade."

Q. Well, we will change the word "grade" to "quality." A. I think so.

Mr. Martin: That is all.

*Cross-examination by Mr. Albert.*

5352

Q. For how long have you been division merchandise manager, Mr. Miller? A. Since April, 1929.

Q. Were you with Taylor & Company before that period? A. I was not.

Q. Have you any duties whatsoever with respect to the actual purchasing of dresses? A. Will you qualify that?

Q. Well, do you in any way assist the buyers in actually purchasing dresses? A. Yes, I go into the market with them periodically.



Q. How often did you go into the market, and which market are you referring to? A. I am referring primarily to the New York market. I go in approximately once a month.

Q. You mean that you go down to New York on an average of once a month to assist in purchasing the dresses?

A. That is correct.

Q. Do you visit the various manufacturers in New York? A. I do.

Q. And inspect their lines? A. I do.

Q. Would you say that for the most part your duties in connection with the various departments over which you have control is of a statistical nature? A. No.

5354

Q. Would you say your duties were— A. Of a general nature.

Q. Well, specifically with respect to what? A. Specifically with respect to their buying and selling operations.

Q. You say that you don't personally buy? A. No.

Q. Isn't it your function to correlate the figures of the various departments, contrast and compare them with previous years and by virtue of that contrast and comparison lay down policies for the future guidance of the department? A. That is a part of the work.

Q. Yes. And as such you are thorough familiar with the various figures in the departments, are you not? A. I am.

Mr. Albert: May I have Commission's Exhibits 470, 471 and 472?

5355

(The exhibits referred to were handed to Mr. Albert.)

By Mr. Albert.

Q. Now, Commission's Exhibit 470, in evidence, is a list of the Guild houses from whom purchases were made during 1935 and the spring of 1936; is that correct? A. (Witness nods head affirmatively.)

5356

*W. E. Miller—For Commission—Cross.*

Q. And is that a complete list of all the Guild houses with whom you did business during that period of time?

A. To the best of my knowledge.

Q. Didn't you check it carefully? A. Yes.

Q. You went over your list, didn't you? A. Yes.

Q. Is there any possibility that you have omitted any?

A. Not that I can see.

Q. That is, as far as your records are concerned, this reveals every single Guild house that you did business with during that period of time? A. That is true.

5357

Q. Now, Commission's Exhibit 471 is a list of the Guild houses from whom purchases were made together with the cost figures of those purchases; is that correct? A. Correct.

Q. And that, I assume, follows Commission's Exhibit 470? A. Not necessarily.

Q. Why do you say "not necessarily"? A. Because the list of purchases at cost includes merchandise received during February, early February, 1936. The list—the other list includes, I believe, as the heading states, only the Guild houses with whom we did business during the year 1935.

Q. Well, Commission's Exhibit 470 is entitled "Guild Houses from whom purchases were made during 1935, and spring, 1936." And this includes only the year 1935 (indicating).

5358

Q. Commission's Exhibit 471 is headed "Guild Purchases, February 1, 1935 to February 1, 1936." A. Correct.

Q. So that— A. Meaning—

Q. So that it does— A. —the purchases that were made that might have been made in early February, 1936, are not included on this list that you have now in your hand.

Q. Well, did you make any purchases from Guild houses after February 1, 1936? A. We received merchandise—our records, you see, cost records are not posted until merchandise is actually received in our store.

Q. Now, with respect to Commission's Exhibit 471, which contains the cost figures, are there any houses listed on that list who are not on Commission's Exhibit 470?

A. I am not prepared to say. If you will let me examine the records I will tell you.

Q. Let me put it this way: Would all the houses listed on Commission's Exhibit 470 be listed on Commission's Exhibit 471? A. Will you state that question again?

(Question read.)

A. I am not prepared to say. I haven't checked those two records definitely together.

Q. Weren't the two records—weren't the two lists compiled from the same records? A. The second list was compiled from the first list, yes.

Q. Well, that is what I mean. So that this—so that Commission's Exhibit 471—I withdraw it. The figures on Commission's Exhibit 471 could very easily have been contained opposite the houses listed on Commission's Exhibit 470, couldn't they? A. With the exception—

Mr. Martin: Object.

A. With the exception that I have stated:

By Mr. Albert:

Q. I notice that the firm of Matthes-Kadetsky Company of Boston is a concern from whom purchases were made in 1935 and in the spring of 1936; is that right? A. If that is the list.

Q. Well, don't you know it aside from the fact it is on the list? A. I haven't my records available here. One list was prepared from the records, and I haven't those with me.

Q. Didn't you state that you personally prepared these records? A. Yes.

5362

*W. E. Miller—For Commission—Cross.*

Q. Don't you recall you took Matthews-Kadetsky Company off your records?

Mr. Martin: I object. He has testified these were made and he cannot recall the names of all those people on that list, some two pages of type-written names. I don't think counsel ought to expect him to memorize this list.

*By Mr. Albert.*

Q. Well, will you have those records available this afternoon, Mr. Miller? A. I would have to consult my firm about that.

5363

Q. Well, you would not want to conceal anything, would you? A. I am not making any effort to.

Q. You would want to show the Commission exactly how you prepared this list, wouldn't you?

Mr. Martin: If your Honor please, we are going back into that same old question. I would like to ask the Court at this time to advise the witness as to his rights in the matter. Counsel is requesting the production of papers which are not here, and I would like to have your Honor advise the witness as to his rights.

5364

Examiner Bennett: I am simply advising him, as I have other witnesses in similar circumstances, that he is under no obligation to produce anything that he has not produced on direct examination; but so far as the Examiner is concerned if the witness cares to accommodate the respondent by producing the things they ask for, he is under no obligation.

*By Mr. Albert.*

Q. Have you been subpoenaed to attend this hearing, Mr. Miller? A. I have.

Q. Did the Commission request you to bring certain records here? A. (No response.)

Q. Did you discuss your testimony before you came in with either Mr. Haycraft or Mr. Martin?

Mr. Martin: I object to that.

Mr. Albert: I think it is most relevant, especially at the impasse I have reached. I don't think I am required to take this man's figures on their face.

Examiner Bennett: Just a moment. I want to say something with regard to that. It is assumed that any experienced lawyer will not offer a witness to any tribunal without knowing whether that witness' testimony is going to be of some importance and some weight in the record as bearing upon the issues which are at stake.

5366

Mr. Albert: Naturally.

Examiner Bennett: There is only one way of finding that out and that is by consulting the witness and knowing in general what he has to say. We will assume, in all this inquiry, that the Commission's attorneys know approximately what their witnesses are going to say. I am speaking now of testimony other than some passing upon public opinion where it is necessary to get the witness without knowing anything about what he has to say. I assume that when the respondents present their case, they will know what the witness is going to say, at least approximately. I think it would be a very poor compliment to the tribunal to have any other state of affairs. Now, let us assume that that is true and let us go ahead.

5367

Mr. Albert: I did not for one moment, by the question, mean to imply that the Commission had not consulted with its witnesses beforehand, nor did I mean to cast any reflection upon them for it.

I am trying to find out what happened with respect to these records in order to know where they are and how I can get at them. I do not think, under any system of procedure, administrative or judicial in the legal sense, that I am required to accept this man's figures at their face value without being given an opportunity to go into them and finding out what they are.


Examiner Bennett: There is no way you can get them on cross-examination.

Mr. Albert: May it please the court, the Commission certainly had the right to subpoena this man to bring them into court, and if he refuses to do that they are subject to Section 10 of the Federal Trade Commission. If the Commission is trying to get the facts, and not to prosecute or persecute, he ought to bring them in. They have had sufficient experience in Philadelphia and Boston to see what is going on with respect to these witnesses from department stores who come in and present figures and do not present records when we try to examine them. What kind of evidence is that going to look like before the Circuit Court or any other tribunal. I don't think they can place much credence in a man that comes in and gives us figures and won't give us the basis on which he computed those figures.

Examiner Bennett: I have said what I have to say. I think when the proper time comes you can subpoena those records if you can make the correct foundation for it, but this is not the proper time.

Mr. Albert: Well, now——

Examiner Bennett: I think you are hardly in a position to dictate what the Commission's attorneys





want to offer in their case. If they do not offer an adequate proof of their case, why, it is too bad for them, that is all.

Mr. Albert: But, your Honor, we are being placed in this position. I think it must be conceded that as far as those figures are concerned, we should have the privilege of cross-examining. Before we have that privilege we have to come back to Cleveland.

Examiner Bennett: You have that privilege. We are not going into an audit of those books. You can fill up the record with that stuff if you want to, but I don't see that it is going to serve you at all.

By Mr. Albert.

Q. I notice, Mr. Miller, that Commission's Exhibit 470, Matthes-Kadetsky Company of Boston, was listed as a house from whom purchases were made by Taylor during 1935 and the spring of 1936. Do you want to follow me on the exhibit (indicating)? A. Yes.

Q. Matthes-Kadetsky is among the affiliated members? A. That is correct.

Q. Now, despite the fact that you purchased merchandise from them during the spring of 1935 and 1936, I notice that they are not included in your Commission's Exhibit 471 with respect to the amount of purchases made from them. Can you explain that? A. That is possible.

Q. Well, I know it is possible. There are many reasons why it can be possible. I would like to know what your explanation is. A. I have no recollection of it.

Q. Can you find out for us between now and this afternoon? A. I suppose I could.

Q. Will you do it? A. If it does not involve bringing in a lot of records here, which I have no right to do. If all you want to know is whether or not there is an error in these two lists, I will verify that for you.

5374

*W. E. Miller—For Commission—Cross.*

Q. You want to offer these various figures—You went over these various figures and lists with Counsel for the Commission, didn't you? A. No.

Q. Did not you discuss them with them? A. I handed them to him.

Q. You just handed it to him in complete form? A. That is right.

Q. He did not go over the records with you? A. He did not.

Q. So that, in so far as the Commission is concerned, they have no knowledge of the accuracy of those records except the fact that you told them they are accurate? A.

5375

I am not prepared to testify to that.

Q. That is so; they have not seen the original records?

Mr. Martin: I object.

Mr. Albert: There is certainly no trade secret revealed.

Examiner Bennett: Will you sit down until this other gentleman gets through?

Mr. Albert: I am sorry.

Mr. Martin: The witness has put in these exhibits. He has testified how they were made up. He has testified to the best of his knowledge and belief that they are correct, and the exhibits speak for themselves.

5376

Mr. Albert: I suppose we are supposed to lay down and take the figures without doing anything about it.

Mr. Martin: Not at all. You can cross-examine him all you please.

Mr. Albert: Well, then, permit me to cross-examine.

Examiner Bennett: You may proceed.

Mr. Albert: Will you answer the question?

(Question read.)

W. E. Miller—For Commission—Cross.

5377

Examiner Bennett: There is an objection to that.

Mr. Martin: I object to that question.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

By Mr. Albert.

Q. Aside from anyone connected with Taylor & Company, has anyone from the Commission checked the accuracy of these records?

Mr. Martin: Objected to.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

5378

By Mr. Albert.

Q. On Commission's Exhibit 470; in evidence, under members of Dress Creators League, I notice the name New York Dress Company? A. Correct.

Q. Can you find that dress company with the amount of purchases made from it on Commission's Exhibit 471? A. No.

Q. Have you any explanation for that? A. Not without consulting the record.

Q. On Commission's Exhibit 470, under members of the Dress Creators League, I notice that Reich Goldfarb is listed as a party from whom you purchased goods during 1935 and '36. Do you find that? It is down near the bottom. A. Yes.

5379

Q. Will you please find that name listed for me on Commission's Exhibit No. 471? A. I do not find it.

Q. Is there any explanation as to why, if you purchased goods from them during 1935, the amount of that purchase is not included in Commission's Exhibit 471? A. I am not prepared to say.

5380

*W. E. Miller—For Commission—Cross.*

Q. I also notice on Commission's Exhibit 470, Franklin House of Chicago. A. Right.

Q. Do you notice that? A. Yes.

Q. Will you please find that for me on Commission's Exhibit 471? A. No, it is not there.

Q. Is there any explanation for it? A. Not without consulting the record.

Q. Now, with all of these various concerns, with whom you did business in 1935, there is not any doubt but what you did business with them in 1935? A. The ones—

Q. You seem to hesitate

Mr. Martin: Give him a chance.

5381

A. Not the ones that are listed here definitely as having been purchased from.

*By Mr. Albert.*

Q. You have a staff of accountants and clerical assistants in Taylor & Company, have you not? A. I have a staff of clerical assistants.

Q. Clerical assistants? A. Yes.

Q. There are also, I presume, accountants who can be made available to you at your request? A. Correct.

Q. Is it not customary for them to draw up lists of this kind?

5382

Mr. Martin: I object to what is customary for somebody else to do.

Mr. Albert: Laying a foundation, if it please the Court.

Examiner Bennett: Read the question.

(Question read.)

Examiner Bennett: For whom?

(Record read.)

Examiner Bennett: I will let him answer if he knows.

The Witness: Will you read the question back again?

Q. (Question again read.) A. The original list of Guild houses with whom we did business was made out by me personally and was turned over to the accounting division at my request to draw up the list of actual dollars purchased from these houses, and was submitted to me at my request.

By Mr. Albert.

Q. Did you give them any instructions as to how to prepare Commission's Exhibit No. 471? A. Of what nature? 5384

Q. Did you give them any instructions? A. I do not quite understand your question.

Q. Well, you told them to prepare a list for you. Yes.

Q. What were your instructions with respect to that list that they were to prepare? A. To prepare a list of cost purchases from those houses.

Q. From the houses that you gave them, listed on No. 470? A. That is right.

Q. When the list that they gave you was handed back to you, that is when Commission's Exhibit 471, in evidence, was given to you by your accountants as an accurate compilation of the purchases of Guild houses, did you compare it with Commission's Exhibit 470, your own list? A. I did not compare it resource for resource. In other words, I did not take the resources list and go down one by one and compare it. I did go over this resource list to see that the houses included in here were houses that were familiar to me as being the ones that we had done business with. 5385

Q. That is, you merely looked at No. 471, in order to see if the houses therein contained were familiar to you as being Guild houses? A. Correct.

5386

*W. E. Miller—For Commission—Cross.*

Q. But you didn't compare it with your own list in order to check on the accuracy of Commission's Exhibit 471? A. I did not check as to the list, resource by resource. I did not.

Q. With respect to all of the estimates and figures that you have been giving us up to the present time, have you just as carefully checked the accuracy of those figures as you have with respect to 470 and 471? A. No. I think I have been accurate in my statements so far.

Q. Have you been as accurate in your other figures in checking their accuracy as you have been with respect to Commission's Exhibits 470 and 471? A. I think I have been more accurate.

5387

Q. That is, you hope you have? A. I think I have.

Q. Well, you obviously had no idea whatsoever of the accuracy of Commission's Exhibit 471; did you? A. I wouldn't say that.

Q. Well, you don't mean to tell me that if you had checked Commission's Exhibit 471 with Exhibit 470 you wouldn't have seen the errors? A. Commission's Exhibit 471 is correct.

Q. As far as it goes, perhaps. A. Commission's Exhibit 471 is correct.

Q. Yes. But you stated that you gave your accountants and your clericals, or whoever it was that drew up Commission's Exhibit 471, instructions to get the actual purchases of the houses listed in Commission's Exhibit 470; didn't you? A. That is right.

5388

Q. Now, there are approximately four or five houses contained on Commission's Exhibit 470 that are not contained on Commission's Exhibit 471. A. That is right.

Q. So that if your clericals and accountants upon whom you relied for your information to a great extent—they made a greivous error; isn't that so? A. Not necessarily.

Q. Well, obviously, they discarded certain houses that you thought were important; isn't that so? A. Not necessarily.



Q. Well, you prepared Commission's Exhibit No. 470; didn't you? A. I did.

Q. You thought that all the houses therein contained were required to be on that list; didn't you? A. I did.

Q. You didn't give them any instructions to leave any houses off of that list; did you? A. I did not.

Q. You specifically told them to take those houses and give the actual purchases of those houses, isn't that so?

A. That is correct.

Q. Well, now, let me ask you this, Mr. Miller. I notice that Commission's Exhibit 470 is divided into various component parts of affiliated members, members of the dress creators league, and in all there are three different lists on Commission's Exhibit 470? A. That is correct.

5390

Q. When we turn to Commission's Exhibit 471, we find all of the houses listed alphabetically without this distinction as to classification? A. That is right.

Q. Do you think your clericals thought that the error might be overlooked? A. No.

Q. By reason of that re-classification of your list? A. No. No.

Q. Did they like their classification better; do you know? A. It is an alphabetical classification that the ledger cards are set up with—in.

Q. You asked them to get up a list of purchases in conformity with your list; didn't you? A. That is correct.

Q. Wouldn't it have been very simple for them merely to put down the purchases along side the names on your list?

5391

A. Yes. Yes, but not necessary.

Q. I mean, it would have been very simple; wouldn't it? A. It could have been done.

Q. Don't you think that there is some serious question as to the necessity of preparing an entirely new list in a different form than your list, especially when an error creeps up in it?

Mr. Martin: Now, if your Honor please, I object to this line of questioning. The witness has testified that he furnished the clerical department with a list of names on which he wanted information. Now, I submit that it is wholly immaterial whether the clerical department went through their files and picked them out alphabetically, or whether they did them this way and whether they did them that way or the other way, as long as the information was furnished.

Mr. Albert: That is just the point.

Mr. Martin: It is immaterial.

Mr. Albert: If it please the Court, Mr. Miller asked his clericals or accountants for information and didn't even see fit to determine specifically and accurately whether they gave him the information he wanted, and yet he comes in before this tribunal and vouches for the accuracy of the records that have been presented to him, and on a very simple examination of it, merely a compilation of lists, we find five names missing from the one list as regards the other, and yet we are supposed to depend upon testimony of that kind to determine an issue of this kind, and I can't get their figures and the Commission won't assist me in getting their figures on a simple little matter like this. God knows what errors have been made on their more vital figures.

Examiner Bennett: I take these to be their figures (indicating Commission's Exhibits 470 and 471).

Mr. Albert: I am sorry. I didn't hear your Honor.

Examiner Bennett: I say, I take these to be their figures (indicating).

By Mr. Albert.

Q. Now, will you turn to Commission's Exhibit 472. A. I don't have that.

Q. (Commission's Exhibit 472 was handed to the witness.) When did you say Taylor & Company was red carded? A. I am not sure of the date. I can give you the approximate date.

Q. What is your approximate of the date? A. About February 16 or 17.

Q. Well, now, you knew that you were coming in here to testify; didn't you? A. Yes, surely.

Q. You knew that one of the main subjects of this investigation was a red carding of Taylor & Company; didn't you?

5396

Mr. Martin: If your Honor, please, I object to this. The witness has testified that he doesn't know the exact date, and it is further in the record he testified that they were never notified by the Guild or any other person that they were red carded; that the first knowledge they had was what they saw in Women's Wear, and he has testified it was around the middle of February, but he doesn't know the accurate, the exact date, and, obviously, he wouldn't know it when they had received no notification of it from the Guild.

Mr. Albert: If it please the Court, it seems to me that it is the philosophy of Government's counsel in this case with respect to our rights in the matter, that we should come in and listen to testimony and then walk out and do nothing at all about it. I think I have a perfect right to find out why this man doesn't know information that is of vital importance to him, why he hasn't found it out before he came in here to testify. It certainly is the province of cross-examination to attack the credibility of a witness.

5397

Mr. Martin: I have no objection to counsel asking questions, but I do want him to ask the proper questions.

Mr. Albert: Well, we differ as to what is a proper question.

Mr. Martin: That is the point I want the Judge to rule on. Not you.

Examiner Bennett: Read the question.

(The question was read.)

Mr. Albert: Merely a preliminary question, your Honor.

Examiner Bennett: What is it preliminary to, if you don't mind.

Mr. Albert: The witness, I believe, is very intelligent, your Honor, and knows exactly what my next question will be, and I have no hesitancy in telling it to him. Why, if this were so important and he knew he was going to testify, didn't he in one minute's time over at his firm take the time to find out when he was red carded so that he could testify definitely to it?

Examiner Bennett: Yes.

Mr. Albert: That is a very simple issue, because I am going to show that they don't want to find out things.

Examiner Bennett: I think the testimony is that the red carding, the subject of the red carding—

Mr. Albert: That may be so, your Honor, I haven't reached—

Examiner Bennett: It is something within the knowledge of the respondent, absolutely.

Mr. Albert: Now, your Honor, that may be so. I haven't reached that point.

Examiner Bennett: It isn't of any crucial importance here as to what date it occurred, so far as I can see. I think I will sustain the objection.

Mr. Albert: If your Honor please, the particular date is not of any crucial importance in this proceeding, but as regards the credibility of this witness and his frankness in giving testimony, it is important to show that despite the fact that he knew the importance of the matter, yet he didn't think it necessary to find out specifically what day it was, which was a matter very easily found out by anybody.

Examiner Bennett: Yes. The matter isn't important. I have listened to what you have had to say. I am going to sustain the objections to that particular inquiry. I think you have all of the information; and I think it bears not at all upon the credibility of this witness.

5402

Mr. Albert: Exception.

By Mr. Albert.

Q. When would you say was the approximate time that Taylor & Company was red carded, Mr. Miller? A. Around February 15 or thereabouts.

Q. When did you make your purchases of merchandise for delivery during the month of February, 1936, approximately? A. Some time during the month of January.

Q. That would be within the period from January 1st, 1935 to February 1, 1936; would it not?

Mr. Martin: January 1, 1936.

5403

A. Will you please restate that?

Mr. Albert: I will withdraw that.

By Mr. Albert.

Q. That would be between the period January 1, 1936, to February 1, 1936, wouldn't it? A. Yes.

5404

*W. E. Miller—For Commission—Cross.*

Q. Will you turn to Commission's Exhibit No. 472. A. (Witness does as requested.)

Q. You will notice under Department 330— A. Right.

Q. —you have listed Rosen Brothers. A. Right.

Q. As an order outstanding at the time of red carding? A. Correct.

Q. Will you please find Rosen Brothers listed as a Guild resource from whom you made a purchase during 1935-1936 as found in either Commission's Exhibit No. 470 or Commission's Exhibit No. 471?

5405

Mr. Martin: Now, if your Honor please, I object to that. That question is obviously unfair. Here is a list, Commission's Exhibits, of orders outstanding. The other list contains purchases. There is quite a distinction between orders and purchases.

Mr. Albert: I fail to see the distinction, if it please the Court, unless the William Taylor & Company is coming in here and attempting to set up some vague strong man that we are not supposed to pierce.

5406

Mr. Martin: In other words, your Honor, this is a list of purchases, the amount of money which was spent by Taylor for these goods. This other list, Commission's Exhibit 472, is an amount of orders which they testified they couldn't get filled. Therefore, if the orders were filled, the purchases—the orders were not filled. The purchases were not made and obviously would not appear on that list.

*By Mr. Albert.*

Q. Well, now, Mr. Miller, let's start back a little further. Did you make any purchases from Rosen Brothers during 1935 and 1936, prior to your red carding? A. Yes.

Q. You did? A. Yes.



Q. So that your orders for \$93.25, \$10.75, \$2.60, and \$10.75 were not the first orders that you gave to Rosen Brothers, were they? A. No.

Q. Will you explain Rosen Brothers cannot be found in Commission's Exhibit 470 or Commission's Exhibit 471?

A. Commission's Exhibit 470 does contain Rosen Brothers.

Q. Commission's Exhibit 470? A. Yes.

Q. I am sorry. I meant to say Commission's Exhibit 471. A. Commission's Exhibit 471 also contains Rosen Brothers to the extent of \$8,189, the largest single purchase on there.

Q. Well, now, will you turn to Department 350. A. On which exhibit, if you please?

5408

Q. On Commission's Exhibit 472. A. Right.

Q. What does Deb. Mode refer to? A. Deb. Mode?

Q. Yes. A. It refers to a manufacturer, and it is an error. I am sorry.

Q. It is an error? A. It is an error.

Q. Did you check that exhibit before you brought it into court? A. I did, but I overlooked it.

Q. Are there any other errors that you might have overlooked? A. No.

Q. You are quite certain of that? A. Positive.

Q. Are you making an error when you say you haven't made any other errors? A. No.

Q. Will you look at Lipman Brothers listed on Commission's Exhibit 472? A. Yes.

Q. Is that contained on Commission's Exhibit 471?

5409

Mr. Martin: The same objection, your Honor, that I previously made. It is two lists of different things.

Examiner Bennett: I will overrule the objection.

By Mr. Albert.

Q. You may answer. A. No.

Q. Do you find it on Commission's Exhibit 470? A. I do not.

5410

*W. E. Miller—For Commission—Cross.*

Q. So that when you stated in response to my questions after you had admitted an error with respect to Deb. Mode that there couldn't possibly be any other error in the exhibit as listed— A. In Exhibit—

Q. —you were mistaken? A. In Exhibit 472 I was testifying to.

Q. Yes. A. That is correct.

Q. You were mistaken? A. No, I was not mistaken. It is not an error. Commission's Exhibit 472 is correct with the exception of the error that I pointed out to you.

Q. Well, then, Commission's Exhibit 470 and 471 are in error; isn't that so? A. There is an omission.

5411 Q. Omission. Well, we will use your word for it. Now, Mr. Miller, you testified yesterday, I believe, that none of the orders contained in Commission's Exhibit 472 were at any time filled; is that correct? A. That is correct.

Q. Is Commission's Exhibit 472—does that represent a list of all orders that were outstanding at the time of the red carding? A. To the best of my knowledge, and I prepared the list.

Q. That is, on or about February 16 or 18, 1936, the date of the red carding that you approximately gave, there were no other orders outstanding except the ones contained in Commission's Exhibit 472? A. To the best of my knowledge.

5412 Q. And since those orders were not filled, then no orders of any kind outstanding at February 18, 1936, were filled; is that correct?

Mr. Martin: I object to that.

A. No, that isn't correct.

By Mr. Albert.

Q. On or about the date of the red carding, did you have orders outstanding with any other firms except the firm—

in addition to the firms listed in Commission's Exhibit 472?

Mr. Martin: I object to that question, your Honor. That is not in proper form. If he wants to ask, "Did you have any other orders outstanding with any other Guild manufacturers," that is perfectly correct, but whether they had orders with—

Mr. Albert: I will accept Mr. Martin's amendment.

Examiner Bennett: All right. You may answer.

The Witness: Will you read the question, please?

(Question read as follows: "Q. On or about the date of the red carding, did you have orders outstanding with any other firms in addition to the firms listed in Commission's Exhibit 472? Mr. Martin's amendment was: Did you have any other orders outstanding with any other Guild manufacturers?")

5414

The Witness: To the best of my knowledge, we did not.

By Mr. Albert.

Q. And you have carefully checked your records in order to give us a complete list of all Guild houses? A. I—

Q. Will you please wait until I finish the question? Your have carefully checked your records to give us a complete list of all Guild houses that owed you merchandise at the time of the red carding? A. I checked over all orders that were open at that time.

5415

Q. Do I understand you correctly that you have never received any merchandise from the houses listed on Commission's Exhibit No. 472 with respect to the orders that were outstanding at the time of the red carding?

5416

*W. E. Miller—For Commission—Cross.*

Mr. Martin: Objected to as repetition. The witness has already testified two or three times that these orders were not filled.

Mr. Albert: The answer "Yes" would have been less awkward than Mr. Martin's objection, I think.

Examiner Bennett: I will let him answer. Overruled. You may answer.

The Witness: What?

Examiner Bennett: You may answer.

Mr. Albert: Read the question.

Q. (Question read.) A. It is correct, according to our records.

5417

*By Mr. Albert.*

Q. Now, did any of the manufacturers listed in Commission's Exhibit 472 offer to deliver the merchandise to you that was outstanding at the time? A. No.

Q. You are quite certain of that? A. That is right.

Q. Did you refuse in any way to accept delivery of the merchandise from the houses listed in Commission's Exhibit 472? A. We didn't have that opportunity.

Q. In other words, after the red carding, all of these houses refused to deliver goods which you had previously ordered? A. They did not deliver goods.

Q. I beg your pardon? A. They did not deliver goods.

5418

Q. Yes. They refused to deliver it to you? A. They did not deliver.

Q. And did not?

A. (Witness nods head affirmatively.)

Q. Do you know when these orders were placed as listed in Commission's Exhibit 472? A. They were placed within the period which you stated.

Q. What period is that? A. Between the period February 1, 1935, to February 1, 1936.

Q. They were placed, then, before February 17, 1936; is that correct? A. That is correct. If that is the date of the red carding. That hasn't been definitely fixed, and I am not positive of it.

Q. I show you Respondents' Exhibit 24, for Identification. I will ask you if that is your signature? A. That is.

Q. Does that signature appear on the letterhead of William Taylor & Sons Company, addressed to Fashion Originators Guild? A. It does.

Mr. Albert: I offer this letter in evidence.

(Letter handed to Mr. Martin.)

Mr. Albert: The pencil notations on it are out, Mr. Martin.

5420

Examiner Bennett: The witness saw only the heading and the signature on the letter.

Mr. Martin: Yes.

Examiner Bennett: Of the document, whatever it is.

(Letter was handed to the witness.)

Mr. Martin: No objection.

The Witness: It is all right.

Examiner Bennett: Received.

(Letter referred to, heretofore marked for identification Respondents' Exhibit 24, was marked as an exhibit and received in evidence.)

By Mr. Albert,

5421

Q. Do you know of the firm of Bernard Appel & Company? A. I do.

Q. Were they a Guild house in 1935 and 1936? A. Yes.

Q. Will you find their name for me listed, if you will, please, on Commission's Exhibit 472, as being a firm from whom you had purchased goods which were not delivered at the time of the red carding?

5422

*W. E. Miller—For Commission—Cross.*

Mr. Albert: I show your Honor this letter in which Bernard Appel is so listed.

A. It is so contained on that.

Q. Now, according to Respondents' Exhibit 24, on March 11, 1936, you wrote to the Fashion Originators Guild that there were still outstanding orders which you had placed with Bernard Appel, isn't that so? A. That is correct.

Q. Do you wish to change your testimony previously given to the effect that Commission's Exhibit 472 is apparently correct and accurate? A. As far as it goes.

Q. But it does not go far enough? A. It is possible this was made up from a record of our unfilled orders, not at the time of red carding, but after the time of red carding. It is possible that that order was misplaced.

Q. You want to be perfectly fair and frank with us, don't you, Mr. Miller? A. Yes.

Q. There has been a mistake made in Commission's Exhibit 472 in listing? A. There was a mistake in listing.

Q. And possibly where we discover one error there may be other errors? A. Not on this exhibit, this exhibit, with the exception of one error that we pointed out to you, is correct.

Q. In Commission's Exhibit 472, it is claimed that you had outstanding orders ~~in~~ completed from Guild resources from the Baron Dress Company, Dresden Dress, Goldstein, Etkin, Radiant Dress, Rosen Brothers, Bender & Hamberger, William Bass, Milton Altmann, Feigenbaum & Adelson, Pauline Fields, Mary Lee, B. G. Garment, Deb. Mode, which you have stated is entirely in error? A. Yes.

Q. And should be off the list completely? A. Yes.

Q. Cecele, Mattie Moskowitz, and Lipman Brothers: is that correct? A. That is correct.

Q. So, that is sixteen firms? A. I did not count them.

Q. I have just counted them. A. Yes.

5424



Q. There are sixteen firms, so there are more orders than sixteen? A. Yes.

Q. In your letter of March 11, 1936, you state the following: "At the present time we still have undelivered orders outstanding with the following manufacturers: Bernard Appel, Milton Altmark, William Bass, Mary Lee." A. That is correct.

Q. At that time, did you have any other orders outstanding? A. All orders had been filled up to that time. All orders in addition to those had been canceled and removed from our files.

Q. What orders of those listed in Commission's Exhibit 472 did you cancel? A. I am sorry. I did not get your question.

5426

Mr. Albert: Will you read the last answer and question?

(Record read.)

The Witness: All those that are still not outstanding as of the 11th, with the exception of the error which you pointed out of Bernard Appel.

Examiner Bennett: Do you want to follow this right up? It is time for a recess.

Mr. Albert: Very well.

Examiner Bennett: Ten minutes.

Mr. Albert: Unless you wish to permit me to ask two or three questions on that.

Examiner Bennett: Certainly, go ahead.

5427

*By Mr. Albert.*

Q. Do I understand you to mean, Mr. Miller, that with the exception of Bernard Appel, Milton Altmark, William Bass, and Mary Lee, referred to in your letter of March 11, 1936, being Respondents' Exhibit 24, all of the orders that were outstanding as listed in Commission's Exhibit 472, were canceled? A. Were canceled and removed from our

5429

*W. E. Miller—For Commission—Cross.*

files. We have an internal cancellation system which does not necessarily go to the manufacturer.

Mr. Albert: Very well, then, we will have a recess. All right.

*By Mr. Albert.*

Q. Mr. Miller, you have admitted certain errors to be prevalent in Commission's Exhibits 470, 471 and 472, and merely on the basis of comparison of the various documents that are in evidence.

Mr. Martin: Object to that.

5428

( Mr. Albert: I have not finished my question.

*By Mr. Albert.*

Q. Don't you believe it possible that if counsel for the respondents were given the opportunity of examining the records from which these exhibits have been drawn that other errors would be found?

Mr. Martin: Objected to as being no admission of an error.

Examiner Bennett: Sustained.

Mr. Martin: Except in the one case.

Examiner Bennett: Sustained.

*By Mr. Albert.*

5430

Q. Well, now, let us go back. I believe you admitted, Mr. Miller, that there were various names contained in Commission's Exhibit 470 that were not contained in Commission's Exhibit 471.

Mr. Martin: Objected to.

By Mr. Albert.

Q. Is that correct?

Mr. Martin: He has already answered that question.

Mr. Albert: Now, if it please the Court, Mr. Martin has stated there have been no admission of any errors. Certainly I should be permitted to point out that there have been admissions of errors.

Examiner Bennett: Answer the question.

Mr. Albert: Read the question.

Q. (Question read.) A. I said that certain names in 471, that were contained in 470 were omitted on 471; that is correct.

5432

By Mr. Albert.

Q. You also testified that there was a mistake in Commission's Exhibit 472 in the complete list of one of the so-called manufacturers listed there; isn't that so? I am referring to Deb. Mode. A. I admitted that the Deb. Mode is still there in error.

Q. Well, then, let me ask you this question, Mr. Miller: Do you believe it possible, in the light of your previous testimony, that if the attorneys for the respondents were permitted to examine the records of Taylor & Company we might be able to disclose other omissions from these exhibits which have been entered into evidence?

5433

Mr. Martin: Objected to.

Examiner Bennett: Sustained.

*By Mr. Albert.*

Q. Now, with respect to Commission's Exhibit 472, which of the orders from the manufacturers therein listed were canceled?

Mr. Martin: Objected to, your Honor. The witness has already testified that all orders were canceled except those which appeared on Respondents' Exhibit No. 24.

5435

Mr. Albert: But Mr. Martin forgets, if it please the Court, that the witness has differentiated between two types of cancellations. He said some were cancellations and some were internal cancellations in his department store. I think it is incumbent to point out the difference.

Examiner Bennett: Do you want to point out that difference here?

The Witness: So far as our procedure is concerned, there is no difference.

*By Mr. Albert.*

Q. Well, now, as a matter of fact, Mr. Miller, when you cancel an order, don't you notify the manufacturer of that fact? A. Not if we have already been notified that the order is not going to be filled.

5436

Q. Were you notified when the order was not going to be filled, these orders? A. Told by manufacturers that they were not going to fill them.

Q. Were you notified by these particular manufacturers that these particular orders were not going to be filled? A. I cannot testify which ones we were notified.

Q. And you were notified by all of them? A. Only notified, that is all I can tell you.

Q. Were you notified by Baron Dress Company that they would not fill the order that was then outstanding? A. We were notified. That is all I can tell you.

Q. How were you notified? A. By being red carded.

Q. How were you notified by Baron Dress Company?

A. I have told you all I can about it.

Q. Were you notified by Dresden Dress? A. I told you all I can about any of those.

Q. Then you don't know whether or not they subsequently notified you of their refusal to furnish the order?

Mr. Martin: Objected to. The witness has testified as to what he knows about it.

Examiner Bennett: Overruled. You may answer.

A. We knew definitely that all of those orders were not going to be filled. 5438

Q. How did you know definitely? A. Because we were red carded.

Q. Aside from the fact that you read in Women's Wear that you were red carded, from your association with the Guild you presumed that manufacturers would not deliver merchandise to you, did you have any knowledge that these particular manufacturers would not deliver merchandise to you on outstanding orders? A. Our buyers contacted manufacturers in the market and were informed that they would not deliver—could not deliver any orders then outstanding.

Q. Did your buyers contact any other manufacturers listed in Commission's Exhibit No. 472? A. They did. 5439

Q. Which ones did they contact? A. I do not recall.

Q. Did you question them about it? A. I did.

Q. Did they make any written reports to you? A. Verbal.

Q. Was that the subject of any inter-office memorandum of any kind? A. That was the subject of considerable discussion.

Q. But did you make any inter-office memorandum of it?

5440

*W. E. Miller—For Commission—Cross.*

Mr. Martin: Objected to. The witness has answered the question.

Mr. Albert: He has not answered the questions.

Mr. Martin: He said "verbally."

Mr. Albert: He said it was the subject of verbal discussion. That does not preclude the fact that there may have been an inter-office memorandum of it.

Mr. Martin: You asked him the question, "Did they make any memorandum," and he said, "verbally."

Mr. Albert: The reply to my question is either "yes" or "no."

5441

A. I don't recall.

*By Mr. Albert.*

Q. No. Is there any written notation of any kind on the order itself as to the disposition of the order? A. I don't understand the question.

Q. What record have you got, written record, that the Baron Dress Company refused to deliver to you any merchandise? A. I don't recall.

Q. You mean by that that there may be, but you are not sure? A. I don't recall. It is very clear.

Q. Then you don't know one way or the other? A. I don't recall.

5442

Q. Well, can't you explain what you mean by "I don't recall"? A. I think it is clear enough.

Q. Well, no, I don't think it is clear. I don't quite understand you, and I presume that you want to be helpful to me. A. I am trying to be very frank with you.

Q. Do you mean by that that you don't know one way or the other whether or not there is a written memorandum? A. I think it perfectly clear. These manufacturers would not deliver merchandise to us. Now, as to the means that they advised us of that, I am not in a position to say because I do not recall.



Q. Did Bernard Appel notify you that he wouldn't deliver merchandise to you? A. I don't recall.

Q. Did Milton Altmark notify you that he wouldn't deliver merchandise to you? A. I am not sure. I am—I don't recall whether he did or whether he didn't.

Q. Did William Bass notify you of that? A. I don't recall.

Q. Did Mary Lee notify you in any way? A. No.

Q. Now, as a matter of fact, didn't Bernard Appel, Milton Altmark, William Bass and Mary Lee fill their orders? A. They did not.

Q. When did you cancel the orders contained in Commission's Exhibit 472? A. Subsequent to the time we were red carded and prior to March 11.

5444

Q. What information did you have that prompted you to cancel the orders listed in Commission's Exhibit No. 472 and not the orders listed in Respondents' Exhibit 24? A. After the delivery dates had been passed on orders listed in Commission's Exhibit 472 we canceled them. The other orders which were still outstanding, because there was no reason on our part to cancel them, until we were definitely sure they would never be filled, we had been told that they would not be filled.

Q. Did you thereafter become definitely sure that they would not be filled? A. They were not filled.

Q. No. Did you thereafter become definitely sure that they wouldn't be filled. A. I said they were not filled.

Q. I am not asking you that. That is the result. A. That is the best—

5445

Q. I am asking—you differentiated between these two lists and said that you didn't include those on Respondents' Exhibit 24 because you had not received definite assurance that they would not comply with the filling of the order. Now, what information did you receive? A. I am sorry—

Mr. Martin: The witness did not make that statement.

*By Mr. Albert:*

Q. What is your statement? A. I think the record will show it.

Mr. Albert: Will you read back his answers, please?

(The record was read.)

*By Mr. Albert:*

5447 Q. Now, would you mind explaining what the difference is between the two lists? A. Well, one list is the list of orders that Exhibit 472—Commission's Exhibit 472 is the list of orders that were outstanding at the time we were red carded with the exception that you have pointed out of Bernard Appel, which was omitted from that list. Respondents' Exhibit 24 is a list of the orders that were still outstanding, had not been canceled or received from our files on March 11, 1936.

Q. Well, you stated by reason of the fact that you were red carded, and therefore presumed that no merchandise would be delivered, that you canceled orders contained in Commission's Exhibit 472 on your books. A. As they became due.

5448 Q. Didn't you cancel them with respect to the date that the order was placed rather than with respect to the delivery date? A. No.

Q. You are quite certain of that? A. I feel reasonably sure of that.

Q. You mean by that that you are now not certain of it or you are still certain of it? A. I say I feel reasonably sure of it.

Q. Do you know when Bernard Appel—withdraw that question. Do you know the delivery date of the orders

that had been placed with Bernard Appel that are referred to in Respondents' Exhibit 24? A. I don't recall that now.

Q. Do you know the delivery date of the orders that had been placed with Milton Altmark, referred to in Respondents' Exhibit 24? A. No, I don't recall.

Q. Do you know the delivery date of the orders placed with William Bass, referred to in Respondents' Exhibit 24? A. I don't recall exactly.

Q. Do you know the delivery date of the orders placed with Mary Lee, referred to in Respondents' Exhibit 24? A. I do not. I do not recall the exact date, no.

Q. As a matter of fact, Mr. Miller, isn't it true that the orders referred to in Respondents' Exhibit 24 were the orders that you chose to have delivery of and that you didn't choose to accept delivery of the orders contained in Commission's Exhibit 472?

5450

Mr. Martin: Objected to.

Examiner Bennett: I will let him answer.

A. No, that is not true.

By Mr. Albert.

Q. Isn't it a fact that with respect to all orders outstanding at the time of the red carding, William Taylor & Sons sought to chose which orders they wished filled at that time? A. It is not true.

Q. Now, I believe William Taylor & Sons is affiliated with the A.M.C.?

5451

Mr. Martin: Objected to, irrelevant, immaterial, not proper cross-examination.

Mr. Albert: It is merely a preliminary question, if your Honor please, laying a foundation on this very point.

Examiner Bennett: The objection is sustained as to that question. I think nothing about that was covered by the direct examination.

5452)

*W. E. Miller—For Commission—Cross.*

Mr. Albert: Well, I think, if your Honor will recollect, previous testimony on this identical topic. I am merely asking it in connection with the orders, and your Honor will see exactly what I am driving at.

Examiner Bennett: What are you trying to do? I want to see what you are trying to develop. Are you attacking his statement that he did not have adequate sources of supply?

5453

Mr. Albert: I am attacking his particular testimony, your Honor, that he could not get his orders which were outstanding at the time of the red carding, and I think that I can prove that they were available to him by reason of the fact that it has been previously testified in other cities by other houses, retailers, in similar condition that they were provided with orders which were outstanding at the time of the red carding.

Mr. Martin: That statement is objected to.

Examiner Bennett: Through that organization?

Mr. Martin: Through—

Examiner Bennett: I have no recollection of any such testimony.

Mr. Albert: Through, if it please the Court, an agreement which was entered into by the Fashion Originators Guild at that time, and which was known to William Taylor & Son.

5454

Examiner Bennett: Well, please confine yourself to that. I don't see—

Mr. Albert: I mean, I have got to lay the foundation for it, your Honor.

Mr. Martin: If your Honor please, the only testimony along the line to which Mr. Albert is referring is the agreement which was entered into between Fashion Originators Guild and Filenes pursuant to court instructions.

Mr. Albert: And that agreement, your Honor—

Mr. Martin: Referred to Filenes Store.

Mr. Albert: Applied to William Taylor & Son also.

Examiner Bennett: Yes.

Mr. Martin: That was not in the record, your Honor.

Examiner Bennett: I don't know. I think that is a matter for your direct case. I am going to sustain the objection to that.

Mr. Albert: Exception.

*By Mr. Albert:*

Q. Now, with the exception of Bernard Appel, are there any other Guild sources with whom you had outstanding orders at the time of the red carding? A. There were not.

Q. And no Guild source with whom you had outstanding orders at the time of the red carding fulfilled those orders?

A. That is correct.

Q. Nor did any Guild source at the time of the red carding offer to fill those orders? A. To the best of my recollection, that is true.

Q. Nor was any attempt made by you to obtain the fulfillment of those orders? A. Oh, yes, there was.

Q. What attempt was made? A. We sent our buyers into the market, as I testified on direct examination, tried to get those orders filled.

Q. Well, aside from the general statement that you sent your buyers into the market, can you be more specific as to what they did? A. They went to each manufacturer with whom we had outstanding orders and asked if the merchandise could be delivered.

Q. Who were those buyers? A. Mrs. Williams, our misses' dress buyer; Mrs. Howard, our women's dress buyer.

5458

*W. E. Miller—For Commission—Cross.*

Q. Just those two? A. That is all I can recall at that time.

Q. Are they here in Cleveland? A. No.

Q. Where are they? A. New York. One of them is in New York. One of them is on vacation.

Q. Will they be back to Cleveland shortly?

Mr. Martin: I object to it as irrelevant and immaterial.

Examiner Bennett: Sustained.

*By Mr. Albert.*

5459 Q. Did you receive a letter in response to your letter of March 11, addressed to the Fashion Originators Guild? A. There was considerable correspondence at that time, and I am not sure exactly when the final letter was received. There was an answer, yes.

Q. I show you a letter on the stationery of William Taylor Son & Company dated March 21, 1936, addressed to Mr. J. M. Golby, Fashion Originators Guild, signed by yourself, and ask you if you can identify that as a letter mailed by yourself to the Fashion Originators' Guild?

Mr. Martin: I will ask that you have it marked for identification.

Mr. Albert: Will you mark this?

(Letter referred to was marked for identification Respondents' Exhibit 25.)

5460

The Witness: That is right.

Mr. Albert: I offer this letter in evidence.

(Letter was handed to Mr. Martin.)

Mr. Martin: No objection.

Examiner Bennett: Received.

(Letter referred to, heretofore marked for identification Respondents' Exhibit 25, was marked as an exhibit and received in evidence.)



Mr. Albert: Will you mark this, please?

(Document was marked for identification Respondents' Exhibit 26.)

*By Mr. Albert.*

Q. I show you Respondents' Exhibit 26 for Identification, and ask you if that is a letter sent by you to the Fashion Originators Guild? A. That is correct.

(Letter was handed to Mr. Martin.)

Mr. Albert: I offer this letter in evidence.

Mr. Martin: No objection.

Examiner Bennett: Received.

5462

(Letter referred to, heretofore marked for identification Respondents' Exhibit 26, was received in evidence.)

Mr. Albert: Will you mark this for identification.

(Document was marked for identification Respondents' Exhibit 27.)

*By Mr. Albert.*

Q. I show you Respondents' Exhibit 27 for Identification, and ask you if that is a letter sent by you to the Fashion Originators Guild? A. That is correct.

Q. And does Respondents' Exhibit 27 for Identification refer to an enclosure of Respondents' Exhibit 25? A. May I see it? 5463

Q. Yes. A. That is correct.

Mr. Albert: I offer Respondents' Exhibit 27 for Identification in evidence.

Examiner Bennett: Received.

5464

*W. E. Miller—For Commission—Cross.*

(Letter referred to, heretofore, marked for identification Respondents' Exhibit 27; was marked as an exhibit and received in evidence.)

Mr. Albert: Will you mark this for identification.

(Document was marked for identification Respondents' Exhibit 28.)

*By Mr. Albert.*

5465 Q: I show you Respondents' Exhibit 28, being a telegram dated March 13, addressed to Albert M. Post, signed "Miller—Taylor's." I will ask you if that is the telegram that was sent by you to Mr. Post? A. That is right.

Mr. Martin: No objection.

Mr. Albert: I offer it in evidence.

Examiner Bennett: Received.

(Telegram referred to, heretofore marked for identification Respondents' Exhibit 28, was marked as an exhibit and received in evidence.)

Mr. Albert: Will you mark this for identification?

(A document was marked for identification Respondents' Exhibit 29.)

5466 *By Mr. Albert.*

Q: I show you Respondents' Exhibit 29, being a telegram addressed to Albert M. Post, dated March 13, 1936, signed "Miller—Taylor's," and ask if you sent this telegram to Mr. Post? A. That is right.

(Exhibit 29 was handed to Mr. Martin.)

Mr. Martin: No objection.

Mr. Albert: I offer it in evidence.

Examiner Bennett: Received.

(Telegram referred to, heretofore marked for identification Respondents' Exhibit 29, was marked as an exhibit and received in evidence.)

Mr. Albert: Will you mark this?

(A document was thereupon marked for identification Respondents' Exhibit 30.)

By Mr. Albert.

Q. I show you a copy of letter dated March, 1936, addressed to you care of William Taylor Son & Company from the Fashion Originators Guild of America by J. M. Golby, referring to your communication dated March 16, and ask you if you received this letter? A. To the best of my knowledge. I am not positive, but I think that that is correct.

5468

Mr. Martin: No objection.

Mr. Albert: I offer this letter in evidence.

Mr. Martin: No objection.

Examiner Bennett: Received.

(The letter referred to, heretofore marked for identification Respondents' Exhibit 30, was marked as an exhibit and received in evidence.)

Mr. Albert: Will you mark this for identification?

(A document was thereupon marked for identification Respondents' Exhibit 31.)

5469

By Mr. Albert.

Q. I show you a copy of a telegram addressed to you, care of William Taylor & Son, dated March 12, from Albert M. Post, in behalf of the Fashion Originators Guild of America, and ask if you received this telegram? A. That is right.

5470

W. E. Miller--For Commission--Cross.

Mr. Albert: The telegram I referred to is Respondents' Exhibit 31 for Identification.

Mr. Martin: No objection.

Mr. Albert: I offer the letter.

Examiner Bennett: Received.

(The telegram referred to, heretofore marked for identification Respondents' Exhibit 31, was marked as an exhibit and received in evidence.)

Mr. Albert: Will you mark this for identification?

5471

(A document was thereupon marked for identification Respondents' Exhibit 32.)

*By Mr. Albert.*

Q. I show you a copy of a telegram, being Respondents' Exhibit 32 for Identification, addressed to you from Albert M. Post on behalf of the Fashion Originators Guild, dated March 13, 1936, and ask if you received that telegram? A. That is right.

Mr. Martin: No objection.

Examiner Bennett: Received.

(Telegram referred to, heretofore marked for identification Respondents' Exhibit 32, was marked as an exhibit and received in evidence.)

5472

Examiner Bennett: We will have a recess until 2 o'clock for luncheon.

(Whereupon, at 12.30 o'clock P. M., a recess was taken until 2 o'clock P. M. of the same day.)

## AFTERNOON SESSION—2 P. M.

Examiner Bennett: Come to order, please. The hearing is resumed:

By Mr. Albert.

Q. Mr. Miller, did you have any conversation with anyone in the Fashion Originators Guild with respect to the fulfilling of these orders? A. Will you state that again?

Mr. Albert: Will you read the question?

Q. (Question read.) A. I believe it was indicated in our one letter that I talked to Mr. Golby on the telephone in New York.

5474

By Mr. Albert.

Q. Do you recall the substance of that conversation? A. Not definitely, no, except as indicated there that it was with reference to the fulfillment of the order.

Q. Now, did you discuss with him the question of whether or not the manufacturers were to deliver to you merchandise with respect to orders which were on hand at the time of the red carding? A. To the best of my recollection I discussed with him the delivery of merchandise on orders that were still outstanding as of the date mentioned in my letter of March 11.

Q. Didn't he inform you of the willingness of manufacturers with whom you had outstanding orders to deliver those orders to you? A. Well, the record, I believe, is indicated in my letter confirming our telephone conversation wherein I said it was understood that manufacturers would deliver us that merchandise which was on order as of March 11, and no others.

5475

Q. Is that what he told you at that time? A. To the best of my recollection, it is.

Q. Didn't he tell you that the manufacturers were ready and willing to deliver to you all of the merchandise with respect to all of the orders then outstanding? A. I don't recall.

Q. You would not say that he did not say that, would you? A. I don't recall.

Q. I am sorry, I did not hear you. A. I am sorry, I do not recall what he said with reference to that.

Q. That is, you don't recall one way or the other what he said? A. In connection with that point, I do not.

5477 Q. Did you make any answer to the letter of the Guild, being Respondents' Exhibit 30, addressed to you? A. I believe there is a letter in evidence that was in answer to this. I am not sure. If I made an answer, it is among these letters that you have.

Mr. Albert: Take this off the record.

(There was a discussion off the record.)

*By Mr. Albert.*

Q. Well, now, Mr. Miller, does the correspondence now in evidence refresh your recollection to the effect that William Taylor Sons & Company wished to choose certain orders which were accepted for fulfillment and wished to cancel certain other orders outstanding at the time of the red carding? A. We simply would receive the orders that were still outstanding at that time is all.

5478 Q. Well; now, before February 17 you canceled certain orders; did you not? A. Before February 17?

Q. Yes. A. Not to my knowledge.

Q. When did you cancel the orders? A. As they became due.

Q. Did they all become due subsequent to February 17?

A. To the best of my knowledge. I am not positive of that.

Q. Did you replace with other merchandise the orders which you canceled which were on hand on February 17?



and unfilled at that time? A. We did the best we could under the circumstances.

Q. Did you fill them all? A. No.

Q. Which ones didn't you fill? A. I don't recall.

Q. Did you say that you had filled half of them? A. I couldn't give you an honest answer on that.

Q. You haven't any idea as to how many you did fill?

A. Oh, all I can tell you is we filled as many as it was possible to fill.

Q. Was it possible to fill more than two or three or four or ten or twenty, or how many? A. My answer—any answer I would give you would be a guess.

Q. So that insofar as you are able now to tell us it is possible that you were only able to fill one order of that group? A. I didn't say that.

5480

Q. Well, you say that you don't know how many you filled. A. That is correct.

Q. So that in so far as you are able to tell us now, it may be that you only replaced one?

Mr. Martin: I object.

Q. Of course, it may be that you replaced more. A. I didn't say that.

Mr. Martin: Objected to. The witness testified—

By Mr. Albert.

5481

Q. What did you say?

Mr. Martin: Your Honor, that he has no recollection of what they were able to do.

Mr. Albert: I think it is a fair question to ask him, then, if it is not possible that he filled only one, since he doesn't know how many he filled.

Mr. Martin: He has told you he has no recollection. He doesn't know.

Examiner Bennett: That is an answer, isn't it?

Mr. Albert: Very well, your Honor.

*By Mr. Albert.*

Q. On or about March 11 there were outstanding some unfilled orders from Guild sources which had not been replaced by orders from other manufacturers not connected with the Guild; isn't that so? A. That is correct.

Q. Did you make any effort whatsoever to obtain that merchandise from Guild sources? A. I think the records are clear on that, that we did.

Q. After March 11, 1936, did you refuse to accept unfilled orders after February 17 from Guild sources? A. Only those orders that had been canceled prior to the date of this letter.

Q. Were you not aware of a stipulation that had been entered into between the Fashion Originators Guild of America and Filenes Sons Company of Boston to the effect that all unfilled orders would be filled by members of the Guild?

Mr. Martin: Objected to. This is not proper cross-examination.

Mr. Albert: I am laying a foundation, if it please the Court with respect to all of this testimony that was just put in.

Mr. Martin: We attempted that this morning and the Judge ruled you out on this particular point once.

Examiner Bennett: Yes, I—

Mr. Albert: In the light—if your Honor please, I tried that this morning before these letters came in. Now with these letters in evidence I believe that a reading of the letters will show that it was entirely possible for them to have had this merchandise if they so desired and I want to show that in

addition to that they were specifically informed of the fact that they could have the merchandise if they wanted, but they chose to attempt to discriminate between which order they wanted to fill and which they did not want to fill.

Examiner Bennett: Well, if the letters will show, of course, it is a matter of record now, and I suppose there is no need of going into it further. At all events, I don't see the relevancy of your questions. I will sustain the objection.

Mr. Albert: Exception.

Examiner Bennett: All right.

*By Mr. Albert.*

5486

Q. Are you acquainted with a Mr. Bergdahl?

Mr. Martin: Objected to as not being proper cross-examination, and irrelevant and immaterial.

Mr. Albert: It is a preliminary question, if it pleases the court. I am laying a foundation to show that they were given specific knowledge and had specific knowledge of the fact that they could obtain these goods.

Mr. Martin: He is laying—

Mr. Albert: I can't jump in feet first, your Honor.

Mr. Martin: He is laying a foundation, your Honor, just on the very same point that you ruled on just before lunch, trying to bring in some connection between this store and the Associated Merchandise Corporation. Now, there is nothing in the evidence on behalf of this witness to in any way connect them with the A.M.C., and I respectfully submit that any cross-examination along that line is improper.

5487

Mr. Albert: I don't think that William Taylor & Sons are ashamed with their connection with the A.M.C., your Honor. There is nothing to hide. We all know it.

Mr. Martin: I don't care what counsel thinks. It is a question of evidence here and I respectfully urge my objection on the grounds stated. It is entirely and wholly outside of the direct examination.

Mr. Albert: If your Honor pleases, I mean this goes vitally to the question as to whether or not their source of supply was stopped. On direct examination he testified that he couldn't get goods from Guild manufacturers, and I am attempting to show that their inability to get the particular goods that were on unfilled orders as of the date of the red carding is due to their own voluntary choice and I think that I should be permitted to show that their representative was informed of it and they had full knowledge of their ability to get the goods.

Examiner Bennett: Yes. If you have direct testimony to that effect, why, we will hear it on the direct case. I will sustain the objection to that question.

Mr. Albert: Exception.

*By Mr. Albert.*

Q. Now, Mr. Miller, have you inquired of your superiors as to whether or not they insist upon your concealing figures with respect to departments of the Taylor store?

Mr. Martin: I object to that question.

Examiner Bennett: Will you give me the question?

(Question read.)

Examiner Bennett: I don't see that that will help us. I will sustain the objection.

Mr. Albert: Well, now, if your Honor pleases, I want to get the figures.

Examiner Bennett: Yes. Well, ask him for the figures. If he wants to give them he will give them. If he does not—

Mr. Albert: But the witness this morning testified that it was first necessary for him to ask his superiors. I want to know if he has inquired of his superiors.

Examiner Bennett: Well, ask him if he is ready to give them.

*By Mr. Albert.*

5492

Q: Have you inquired of your superiors as to whether or not they will permit you to give the figures with respect to what you testified to this morning?

Mr. Martin: I object. His Honor has just ruled on that question.

Examiner Bennett: I recall it was said this morning.

A. I have not had an opportunity.

*By Mr. Albert.*

Q. We left here at half past twelve this morning to convene at 2 o'clock. Were you at your store? A. I was not.

Q. Did you attempt to communicate with your store in any way?

5493

Mr. Martin: I object to this as immaterial and irrelevant.

Mr. Albert: It is most material for the simple reason I want to show that Mr. Haycraft's and Mr. Martin's remarks about our attempting to prolong these proceedings are entirely improper and out of place. Any prolonging of these proceedings

is due to the fact that we cannot get information from the witnesses that are put on the stand by them.

Examiner Bennett: I think that the instruction of the Examiner on that matter was entirely sound, and I am going to follow that. If this gentleman feels as though it was not necessary for him to advise with his superiors, why, that seems to be the fact since he has not done it, why, I think that is all there is to it.

Mr. Albert: Well, your Honor, if it please the Court—

Examiner Bennett: That is, he is not under any obligation to secure those things for you if he hasn't them.

Mr. Albert: I think that the Commission, if it seeks to present a fair case, should make it possible for a witness to substantiate the testimony that they have gotten. If the Commission want to conceal anything they should not ask witnesses to give figures without being able to back them up.

Examiner Bennett: There is a time when you can get that, if you are entitled to it, I am sure. If you cannot get it on cross-examination. I am sure there is no way of the witness of the Commission forcing it on cross-examination.

Mr. Albert: Since there was no basis whatsoever demonstrating the accuracy of the opinions that have been presented here to-day, with respect to percentages—

Examiner Bennett: You have the testimony of this witness, and if you can discredit that testimony by producing testimony to the contrary, that is perfectly all right.

Mr. Albert: Will your Honor bear with me for just a moment?



Examiner Bennett: But you are not entitled to have him go to the pains and trouble of producing you means of discrediting himself.

Mr. Albert: Will your Honor bear with me for just a moment? I think I cannot help but agree with what your Honor says in so far as your Honor has pronounced that as the decision of the Court, but in the light of the fact that we have demonstrated the errors in various exhibits that have been presented by this witness merely from an examination of the exhibits presented by the witness without examining the records from which they were taken, and with respect to his other figures, we have merely his statement what they are, and, further, in the light of the witness and the Commission backing up the witness, he refuses to permit us to examine as to the accuracy of those figures, I think you should strike out all his testimony.

5498

Examiner Bennett: I think that is not an entirely accurate statement. The Commission does not prevent you from cross-examining this witness. Now you have already taken a couple of hours at that sort of thing, cross-examining him. If you have shown that this witness is mistaken, so much the better for your case. You should be very much gratified if you have shown that.

5499

Mr. Albert: I would probably be even more gratified if I could show the result of figures that were erroneous and not make it necessary for us to come back to Cleveland, your Honor. That is the point.

Examiner Bennett: That is the decision of the Examiner. I am sorry that I cannot change.

Mr. Feldman: Your Honor, I just want to make one short statement in that connection. I just

5500

*W. E. Miller—For Commission—Cross.*

happen to be acquainted with the procedure that the Commission's attorneys employ in getting information. They don't always subpoena witnesses. They go to these witnesses, and they ask them to produce certain figures, or they give them a questionnaire to answer, or send them a questionnaire to answer, and in response to those questions they get information. Now, is there any difference when the witness gets on the stand and testifies and gives part of the information? Why cannot the attorney for the respondent ask the witness to produce testimony that will illuminate the proceedings and possibly save time. It just does not——

5501

Examiner Bennett: I beg your pardon?

Mr. Feldman: It just does not seem proper to me.

Mr. Martin: I would like to state for the benefit of counsel that this witness has testified that he is here testifying pursuant to a summons.

Mr. Feldman: But some of the other witnesses that have testified did not have like summonses, and I take it what we want to do is get through the proceedings.

5502

Examiner Bennett: Yes. Well, I have heard your argument on the matter. There is a time when you can come and call this witness and get anything that he has or he can procure for you and offer it in this case. This is not the time. You are cross-examining this witness now, and I am not going to send him around on errands collecting evidence which may or may not discredit him. That is at his own discretion.

*By Mr. Albert.*

Q. Mr. Martin, will you turn to Commission's Exhibit No. 473?

Mr. Feldman: That was not photostated. That is the original.

Mr. Albert: I am switching from this, your Honor, in order to save time waiting for the other exhibits to come back. Now I find this exhibit is gone. May we have a few minutes' recess to wait for it?

Examiner Bennett: Yes. You can find out whether it is actually gone.

Mr. Martin: What exhibit is that?

Mr. Albert: 473 is the percentages.

Mr. Martin: I will be glad to give you a copy of it.

5504

Mr. Albert: That is all right.

Examiner Bennett: There is a copy of it, Mr. Albert.

*By Mr. Albert.*

Q. Now, what department, Mr. Miller, is 330? A. Women's dresses at \$12.95 and up.

Q. What is the price range? A. \$12.95 retail and up.

Q. What was the total volume of sales in price, in dollars?

Mr. Martin: I object.

Mr. Albert: 1936.

Mr. Martin: That question is objected to. This exhibit, if your Honor please, does not purport to go into volume sales by dollars. It is merely percentage, and that question of dollar sales was avoided on direct examination, and I respectfully submit that it is not a proper subject of cross-examination.

5505

Mr. Albert: If it please the Court, may I ask what the percentages are based on?

Examiner Bennett: Yes, certainly.

5506

*W. E. Miller—For Commission—Cross.**By Mr. Albert.*

Q. What are the percentages based on, Mr. Miller? A. Based on dollar sales.

Mr. Albert: Is Mr. Martin withdrawing his objection?

Mr. Martin: I object to any introduction—

Examiner Bennett: It is all a matter whether this witness cares to disclose those figures. If he doesn't, he does not, and I am not going to force him, because it would be merely a matter of verifying certain arithmetical processes, and I think if we take any of it for granted, we might take for granted that those processes were accurate, were carried on with accuracy. Do you care to disclose your dollar figures?

5507

The Witness: No.

Examiner Bennett: All right. I am not going to force you to. I will sustain the objection.

*By Mr. Albert.*

Q. What was the dollar volume in Department 330 in February of 1935?

Mr. Martin: Same objection.

Examiner Bennett: Sustained.

5508

Mr. Albert: If it please the Court, I wish to strenuously object to the Commission's objections to my asking the question before the witness testifies or signifies his intention of not giving me the information. It merely bears out my contention that the Commission doesn't wish this information brought out.

Examiner Bennett: I asked him a qualifying question covering all of this matter, and that is whether he objected to disclosing the figures. He

said he did not wish to disclose the figures. That is my recollection of the record, and I think it covers the situation. Of course, if you want to put the Commission on record on each particular thing, go ahead and do it.

Mr. Albert: I am sorry, your Honor, but I feel that I must do it.

Examiner Bennett: All right.

Mr. Albert: In order to protect the record:

Examiner Bennett: Put him on record on everything.

*By Mr. Albert.*

5510

Q. Now, with respect to Department 330, what is the total volume of dollar sales for March of 1935?

Mr. Martin: Same objection.

Mr. Albert: Now, if it please the Court, I insist that the Commission, unless it attempts and wishes to have its objection interpreted as seeking to hide these figures, not object to the question but let the witness answer as to whether he wants to volunteer it. Certainly if the witness wants to volunteer, the Commission should have no objection to the true facts being presented.

Mr. Martin: If your Honor please, this is simply a waste of time on the part—

Mr. Albert: I think it is a greater waste of time the other way. 5511

Mr. Martin: Will counsel please let me finish? I will be glad to bear with him as long as the Judge will.

If your Honor please, counsel has asked this witness, and your Honor asked him whether he desired to disclose those figures. He has testified that he did not desire to do it. Now, I can see no point in

5512

*W. E. Miller—For Commission—Cross.*

counsel for the respondent therefore asking him question about each and every one of those figures when the witness has already testified that he doesn't want to disclose them.

Examiner Bennett: Yes. Well, I see no point—

Mr. Albert: The Commission doesn't see any point in any cross-examination.

Examiner Bennett: —in getting this on the record. Do you wish to be heard further, Mr. Albert?

Mr. Albert: I wish to continue my questioning, your Honor.

5513

Examiner Bennett: I am going to sustain those objections if they are made by the Commission, and I assume they will be, but you can ask the question, though—I have no objection to your asking the question if you want to put the Commission on record in each particular item. Go ahead and do it.

Mr. Albert: Yes, your Honor, I am afraid I must.

Mr. Martin: In order to save time, Mr. Albert, I am perfectly willing to stipulate that the Commission can be put on record as to each one of these figures, purely in order to save time. The witness has testified that he does not want to give any of those figures, and is not going to give any of them, so I need no valid reason for keeping on asking him as to any specific item, and I am therefore perfectly willing to stipulate that. I do object to the continuance of the examination along this line.

5514

Mr. Albert: Well, if it please your Honor, I can't, with all due respect, place much credence in Mr. Martin's contention that he can't see any validity in the continuation of a line of cross-examination because I believe that the Commission's counsel all along have made it clear that they can't see the purpose of any cross-examination of any witness on anything. Now, I feel that I have got to make my



record complete with respect to this witness not wishing to disclose the information upon which he comes in here and makes some very wild assertions.

Examiner Bennett: All right. Go ahead.

*By Mr. Albert.*

Q. Now, with respect to Department 330, do you know the volume of dollar sales for the year 1936, for April?

Mr. Martin: I object.

Examiner Bennett: Sustained.

*By Mr. Albert.*

Q. Do you know those figures for April, 1935?

Mr. Martin: Same objection.

Examiner Bennett: Sustained.

*By Mr. Albert.*

Q. Do you know the figures for that department for May of 1935?

Mr. Martin: Same objection.

Examiner Bennett: Sustained.

*By Mr. Albert.*

Q. For May of 1936?

Mr. Martin: Same objection.

Examiner Bennett: Sustained.

*By Mr. Albert.*

Q. Do you know the figures for Department 330 for June of 1935?

Mr. Martin: The same objection.

Examiner Bennett: Sustained.

5518

*W. E. Martin—For Commission—Cross.**By Mr. Albert.*

Q. For June of 1936?

Mr. Martin: Same objection.

Examiner Bennett: Sustained.

*By Mr. Albert.*

Q. Do you know the figures for Department 335 for February of 1935?

Mr. Martin: Same objection.

Examiner Bennett: Sustained.

5519 *By Mr. Albert.*

Q. Did you know them when you prepared this exhibit?

Mr. Martin: Same objection.

Mr. Albert: Now, does the Commission's counsel really sincerely object to this witness telling us as to whether or not he knew what he was doing when he prepared those exhibits?

Examiner Bennett: You are asking him if he knew of the figures? I will let him answer.

Mr. Albert: When he prepared it.

A. Yes, I knew them.

*By Mr. Albert.*

5520

Q. Yes.

Mr. Albert: I don't think Mr. Martin really wants us to believe that that objection was serious. I wonder if the other objections are as serious as that one.

Mr. Martin: I think that question has already been answered, Mr. Albert. He testified to that on direct examination.

By Mr. Albert.

Q. Do you know of the volume of dollar sales for Department 335 for March of 1935?

Examiner Bennett: Do you know?

Mr. Martin: Do you know?

Examiner Bennett: He didn't ask you—

Mr. Martin: Yes or no?

The Witness: Will you read the question?

(Question read.)

Examiner Bennett: That is asking you now whether you know now.

The Witness: No.

5522

By Mr. Albert,

Q. Did you know them when you prepared this exhibit?

A. Yes.

Q. Did you give them to the Commission? A. No.

Q. Did you inform the Commission of them in any way?

A. No.

Q. Did the Commission ask you for the figures? A. No.

Q. Would you have given the Commission the figures if they had asked for them?

Mr. Martin: Objected to.

Examiner Bennett: Well, I am going to let him answer.

A. My firm didn't want the figures given out.

5523

By Mr. Albert.

Q. Would you have given the figures to the Commission if they had asked for them, is the question. A. No.

Q. Do you know the dollar value for Department 335 for March of 1936?

5524

*W. E. Miller—For Commission—Cross.*

Mr. Martin: At this time.

A. No.

Q. Did you know them when you drew the exhibit? A. Yes.

Q. Are the figures available? A. They are.

Q. Will you produce them? A. No.

Q. Do you know the dollar value or the figures for Department 335 for April of 1935?

The Witness: What is the question?

(Question read.)

Mr. Martin: Do you know them at this time?

5525

The Witness: No.

*By Mr. Albert.*

Q. Did you know them when you prepared the exhibit?

A. Yes.

Q. Did you take them from the records of the Taylor Company? A. I did.

Q. Are those figures available? A. They are.

Q. Will you produce them? A. No.

Mr. Martin: If your Honor please—

*By Mr. Albert.*

Q. Will you produce them on direct examination?

5526

Mr. Martin: I object to any further questioning along this line, as it is an obvious effort to delay and waste time and it is accomplishing no good purpose. The witness has told him over and over again that he is not going to furnish them and I can see no good purpose in keeping on asking him any longer. I respectfully request that the Examiner limit this cross-examination along this line.

Examiner Bennett: Well, I am going to let him finish it.

Mr. Albert: If your Honor please, in answer to that, may I point out that one very good purpose that it showed was the obvious desire of the Commission not to even permit this witness to testify that he knew the figures when he prepared the exhibit by reason of the fact that he objected to my asking him that question.

Examiner Bennett: All right. Go ahead.

The Witness: What is that question?

Mr. Albert: There is no question pending.

By Mr. Albert.

5528

Q. Do you know the dollar value of Department 335 for April of 1936?

Mr. Martin: At this time.

A. I do not.

By Mr. Albert.

Q. Did you know it at the time you prepared such exhibit? A. I did.

Q. Did you prepare this exhibit from those figures? A. Prepared under my supervision.

Q. You personally had no hand in the preparation of the exhibit? A. Not in the exact preparation of it. I 5529 knew the figures.

Q. Did you make the arithmetical computations that are contained in this exhibit? A. I did not.

Q. Did you check the arithmetical computations that are made on this exhibit? A. They are our regular monthly records already computed for us.

Q. Did you check the arithmetical computations? A. I did not.

Q. All you know about these figures is that somebody in William Taylor Sons & Company prepared them for you from their records? A. Under my supervision.

Q. Well, your supervision amounted to the fact that you asked them to prepare them for you; isn't that so? A. Correct. That is right.

Q. That is all your supervision amounted to? A. That is right.

5531

Mr. Albert: Now, if it please the Court, I move that this exhibit be stricken from the record on the ground that the witness has testified that except for the fact that it was handed to him by somebody in the employ of William Taylor Son & Company, he knows nothing with respect to the truth or accuracy thereof; and, further, I object upon the specific ground that upon my examining him before the exhibit was admitted into evidence he declared that he had supervised the preparation, that he had prepared the figures, that he could testify as to the breakdown of them, that he could give us all of the figures of how the percentages were arrived at. I say that now his testimony reveals that he knows nothing about it; it is merely handing in a piece of paper that was handed to him by somebody else.

5532

Mr. Martin: I suggest, your Honor please, that the statement of counsel is not only a little bit misleading, but is entirely and wholly and grossly misleading and deliberately. There is no evidence in the record at all that this witness testified he could break down these figures, or anything of that sort at all. He declared—he testified that these figures were prepared under his supervision at his request from the store records.

Mr. Albert: I will find that for you in a moment, your Honor.



On page 3020 of the record, your Honor, the following transpired between Mr. Miller and myself when I originally objected to the admission of Commission's Exhibit 473 into the record:

"Q. Mr. Miller, with respect to Commission's Exhibit No. 473 can you testify definitely and specifically with respect to the figures therein contained? A. Yes, I can.

"Q. Can you testify definitely and specifically with respect to the various factors that led either to an increase or decrease in the various departments? A. I believe so.

"Q. Can you testify from first-hand knowledge with respect to the component departments that make up the total store estimates of advances or decreases? A. I am sorry. I didn't get your question.

5534

"Q. Can you tell us specifically what departments were considered in reaching the figure with respect to the total store as contained in Commission's Exhibit 473? A. Yes. Yes.

"Q. Have you the figures with respect to all other departments? A. I have at my access.

"Q. Of the store? A. Right.

"Q. Have you the figures for 1935? A. I have.

"Q. The specific figures? A. I have.

"Q. Can you further identify these department numbers with—

5535

"Mr. Martin: I will get to that.

"Q. (By Mr. Albert) With the particular department that you have testified to? A. I can.

"Q. How did you obtain these figures? How did you reach them? A. Obtained them from the records.

"Q. Well, what, specifically, do they represent? A. They represent the percentage either of increase or decrease of sales of that period.

5536

*W. E. Miller—For Commission—Cross.*

"Q. Did you take those off the sales slips? A. Took them off of the annual summary of sales.

"Q. You haven't any annual summary of sales for 1936 yet, have you? A. I have the monthly summaries. I beg your pardon. They are monthly summaries taken from each month's report. I am sorry.

"Q. Does this represent volume of units sold, or does it represent— A. It represents—

"Q. —dollar value? A. Dollars."

5537

Now, I think from that examination, your Honor, it specifically appears that this witness testified as to his personal knowledge of these figures, not that they were prepared by anybody under his supervision or anything else, and the purpose of examining him voir dire with respect to 473 was to obviate the terrific difficulty that we ran into in Philadelphia and in Boston when witnesses came in and presented figures and thereafter passed the buck to their subordinates, and I believe that your Honor admitted this into evidence by reason of the fact this witness testified that he could tell us all about the meaning of these figures and what they represented and how they were arrived at. I sincerely believe that while your Honor didn't express any opinion about it at the time, I think, if I am not mistaken or misinterpreting your Honor's ruling, that had this witness said that he couldn't explain these figures in any manner, shape or form, if cross-examined about them that your Honor wouldn't have permitted this exhibit to go into evidence. We have here simply a piece of paper that was taken from the records of William Taylor & Son Company thrown at the Commission for such weight as it cares to give it, and we have no explanation whatsoever what they mean. As a matter of fact, how

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little the exhibit is understood is evidenced from the fact that Mr. Martin didn't even know that it referred to the dollar value. I respectfully request and move that this exhibit be stricken from the record.

Examiner Bennett: Are you through with your statement?

Mr. Albert: Yes, your Honor.

By Examiner Bennett.

Q. You speak about taking those figures from your records? A. Yes.

Q. Are they records of your concern or store and are they made in the ordinary course of business? A. They are, yes.

5540

Q. Are they records on which you rely on in carrying out your business? A. They are.

Examiner Bennett: I deny the motion.

Mr. Albert: May I further point this out to your Honor? "By Mr. Martin: Q. Was this prepared by you under your supervision (referring to 473)"——

Examiner Bennett: Yes.

Mr. Albert: "Prepared by me?"

"Q. Are you satisfied as to the correctness of it?"

A. I am."

And yet the witness has testified that he has made no investigation of the correctness of it.

5541

Examiner Bennett: Well, he has now told me that he is satisfied of the correctness of it. They are figures upon which he relies. The case Bonay & Sons makes that perfectly proper in a proceeding of this kind, makes that sort of testimony, and, in fact, I think it is proper under the strictest kind of procedure in law where it is a matter that is relied on by a business concern in its own business.

5542

*W. E. Miller—For Commission—Cross.*

It has a probative value, and that is the only thing that the Examiner is particularly concerned with just now. If Mr. Miller's testimony was not as complete as it might have been, why, I think he has remedied it merely by stating just where the thing came from and what it is.

Mr. Albert: Exception.

Examiner Bennett: All right.

*By Mr. Albert.*

Q. With respect to Department 335 do you know the dollar volume of sales for May, 1935?

5543

Mr. Martin: That is, at the present time?

A. I do not.

*By Mr. Albert.*

Q. Did you know them at the time that you prepared this exhibit? A. I have explained that I personally didn't prepare this exhibit, but I know what the dollar volume of sales were, yes.

Q. Did you examine them, the original records, to determine what they were? A. Yes; I have those original records.

Q. And you examined them at the time of the preparation of this exhibit? A. I didn't prepare this.

5544

Q. I say, you examined the original records at the time of the preparation of this exhibit? A. No; they were our store records. We took them for face value, naturally.

Q. No. No. Did you examine the physical record that contained the figures before the preparation of this exhibit? A. Not at the time it was prepared. I have examined it, if that is what you mean.

Q. Is that figure available? A. Yes.

Q. In what book or record—what is the name of the book or record in which that figure is contained?

Mr. Martin: Objected to as immaterial.

Examiner Bennett: Sustained.

*By Mr. Albert.*

Q. Have you any objection to telling me the name of the book or the record in which that figure is contained?

Mr. Martin: Objected to.

Examiner Bennett: I will let him answer.

A. No, I have no objection.

Q. What is the name of the record or the book in which that figure is contained?

Mr. Martin: Objected to as being immaterial.

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Examiner Bennett: Well, I will let him answer, if he wants to.

A. It is the monthly report, merchandise report.

Q. And that is the reference to it in your store, when you refer to it, monthly merchandise report? A. Monthly report of operations, yes.

Q. Monthly— A. Monthly report of the merchandise operations.

Q. Monthly report of the merchandise operations. Thank you. Are these figures of the monthly volume of dollar sales of your various departments in any way made public to anybody except employees and executives of William Taylor Sons & Company?

5547

Mr. Martin: Objected to as being immaterial.

Mr. Albert: I think it is quite material, your Honor, as going into the credibility and the frankness and fairness of the contentions of this witness that those figures should not be made public.

Mr. Martin: If your Honor please, I must—maybe I am rather dense, but I can't see what the credibility has to do with the question of whether

the figures are open to the public or not. I can't see where it has anything to do with the question of credibility of this witness.

Mr. Albert: It is very simple. It is a very simple reason and there is nothing dense about it at all, Mr. Martin. The fact that this witness ostensibly in good faith is coming up here and saying that he doesn't want to disclose those figures, and the Court in reliance upon that good faith has sustained him in the contentions that he doesn't have to present those figures.

Mr. Martin: And the Court—

Mr. Albert: If those figures are a matter of public record, then there is evidence of bad faith on the part of this witness in not attempting to give us the figures with respect to which he has testified, and we can readily infer that he doesn't present them because of the fact that they would not support the figures that are in evidence in Commission's Exhibit 473.

Mr. Martin: The Court has already told you that on numbers of occasions that those figures would be available to you at the proper time.

Examiner Bennett: Yes. I will sustain the objection to the question.

Mr. Albert: Exception.

Q. With respect to Department 335, do you know the total volume of these sales for May of 1936? A. I do not.

Q. Did you know it at the time that this exhibit was prepared? A. I knew of it, yes.

Q. Are those figures available? A. Yes.

Q. They are available in your monthly merchandise reports at the store? A. Yes.

Q. And they are presently in the store? A. What?

Q. Those figures are presently in the monthly merchandise report at the store? A. That is right.



Q. Will you make those figures available to me?

Mr. Martin: Objected to.

Mr. Albert: Does the Commission object to the witness telling me whether or not he wishes to give me the figures?

Mr. Martin: He has already told you on several occasions that he would not give them to you.

Examiner Bennett: He may answer.

A. No, I cannot give it to you.

Mr. Albert: I think it is the evident purpose of the Commission to conceal the evidence.

Mr. Martin: We have no desire to conceal it.

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Examiner Bennett: Just a moment. That is disposed of. Go ahead.

By Mr. Albert.

Q. With respect to Department 330, do you know the figures of dollar volume sales for February of 1935? A. I do not.

Q. Do you know them for February of 1936? A. I do not.

Q. Did you know the respective figures at the time that this exhibit was prepared? A. I did.

Q. Are they contained in your monthly merchandise reports? A. They are.

Q. Are they at present in the store in Cleveland? A. They are.

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Q. Will you make those figures available to me?

Mr. Martin: I object.

Examiner Bennett: Overruled. I will let him answer that question.

A. No.

5554

*W. E. Miller—For Commission—Cross.**By Mr. Albert.*

Q. Do you know the dollar volume of sales for Department No. 350 for March of 1935? A. I do not.

Q. For March of 1936? A. I do not.

Q. Did you know those figures at the time that the exhibit was prepared? A. I did.

Q. Are those figures available at the present time? A. They are.

Q. Are they contained in the monthly merchandise reports of William Taylor Sons & Company? A. They are.

Q. Are they at present in Cleveland? A. They are.

Q. Will you make those figures available to me? A. No.

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Q. Now, with respect to Department 350, would your testimony with respect thereto for April, May and June, as regards the dollar volume of sales for 1935 and 1936 be the same if I asked you the same question with respect to Department 350 as I asked you with respect to Department 330 and Department 335? A. It would.

Q. That is, the figures are available but you would not produce them for me? A. Yes.

Q. Now, you have testified, Mr. Miller, that at least a good part of your work as divisional merchandise manager has to do with reference to correlating figures of different departments comparing them, and thus fixing the policy of the store. A. I said a part of it.

5556

Q. Yes, a part of it. I am not quibbling with you on that. When you have three departments, each of which sell behind in its dollar volume of sales for 1936, as contrasted with 1935, and you have the specific figures with respect to each department, how do you arrive at a single figure which will demonstrate the percentage of difference of the three departments combined between 1935 and 1936? Do you understand the question? A. I think I do, but I think it better be read back.

(Question read.)

A. I assume that is a hypothetical question?

W. E. Miller—*For Commission—Cross.*

5557

Q. Yes. I want to find out. A. My attention of three departments' volume figures in dollars for the three departments for the period of 1935 and the same three, for the same months in the following year, adding those figures, making a difference, dividing it by the original figure, 1935, altogether.

Q. Is this correct: Let us assume that in 1936 Department A was 10 per cent. behind its 1935 figures; let us assume that Department B was 20 per cent. behind its 1935 figure— A. Right.

Q. —and let us assume that Department C was 30 per cent. behind its 1935 figure. What would be the total percentage behind 1935 of the three departments?

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(Witness laughs.)

Mr. Martin: Objected to as immaterial, your Honor; certainly not proper cross-examination. I doubt if the witness can answer it himself.

The Witness: I am sure I cannot. I am not going to be sucked in on that one. Don't worry. It is a good question, though.

Examiner Bennett: Objection sustained.

Mr. Albert: Was the objection sustained?

Examiner Bennett: Yes.

*By Mr. Albert.*

Q. Well, now, Mr. Miller, will you turn your attention to Commission's Exhibit 473. We find there that Department 330 in April of 1936 fell behind April of 1935 12.38.

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A. That is right.

Q. We find that Department 350 fell behind in 1936 over 1935 6.18, according to this exhibit. A. That is right.

Q. Would you say that the combined difference between 1936 and 1935 of those two departments is, roughly speaking, 18 point plus? A. No.

5560

*W. E. Miller—For Commission—Cross.*

Q. Why not? A. You cannot do that. You cannot average or add or subtract the percentages. You have to have dollar volume figures to compute those. That is the way to average.

Q. Now, we also find there Department No. 335 went ahead in 1936 over 1935 11.97. A. That is right.

Q. Now, we find on the bottom line that the total difference between the dollar volume in 1936 of Departments 330 and 335 and 350, the total difference between their dollar volume in 1936 over 1935 is minus 20.2, a sum in excess of the decrease in two of the three departments taken individually. A. That is right.

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Q. Well, now, what were the figures on which you predicated that computation? A. Dollar figures for those departments this year and last year.

Q. Well, can you give us a rough approximation in order to show us how you reached that computation? A. I haven't those figures.

Q. So you don't know how they reached that figure? A. Yes, I know how they reached them, but I haven't the figures with me.

Q. Well, how did they reach them? A. The dollar figures last year and the dollar figures for this year for those three same departments, taking the difference and dividing by last year's total volume for those three departments.

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Q. Let me put it this way: Let me ask you the question this way: How can you get a total decrease of 20 per cent. in the three departments which is greater than the total decrease and difference between 1936 and 1935 of the individual departments? A. I would have to see the figures to answer that.

Q. You have seen the figures, but— A. I would have to have the figure to answer that.

Q. I am sorry, I cannot hear you. A. I would have to have the figure to answer that, the dollar figures in order to answer that question.

Q. Do you believe that any figures could result in such a computation? A. I would have to see those figures, I would say.

Q. Well, doesn't it sound strange to you? A. I would have to have the figures before I can answer that question.

Q. Does it not sound strange to you? A. No.

Q. I mean that Department A should be 10 per cent. behind, and Department B should be 10 per cent. behind, and that the two departments combined should be 30 per cent. behind? That is all that figure is. A. I cannot answer that unless I had the figures. If I had the figures I could answer in a minute.

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Q. Let us go into the theory of it. You laughed very much at my question. Let us see what is so funny about it.

Mr. Martin: I object to going into any theory.

Mr. Albert: I am forced to go into theory when he will not give the figures upon which it is predicated. I am going to show on his own exhibit, as I did on 470, 471 and 472, that his own figures can be shown to be fallacious.

Mr. Martin: Object to any theorizing. The witness has testified that he can only answer Mr. Albert's question if he had the figures available in front of him.

Mr. Albert: How can the whole be greater than the component parts? That is a simple question that is presented to us on these figures. I don't claim to be an Einstein, but I don't see how a third and a third and a third can add up to more than one. That is what they have done with these figures.

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Examiner Bennett: The record is made on that. Go ahead.



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*W. E. Miller—For Commission—Cross.**By Mr. Albert.*

Q. Will you give us the theory on which the manner of these figures were arrived at? A. The division of the dollar figures by those three departments for the months in question last year, the same three departments in this year, the difference divided by last year's total.

Q. Now, I am just asking you these questions with respect to your qualifications to pass on this. There is nothing else behind it. I believe you are a graduate of Harvard Business School, aren't you? A. Yes.

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Q. While you were present at Harvard Business School, I believe you took some courses on statistics. A. That is right.

Q. Well, now, from your knowledge of those courses that you had at Harvard Business School, will you please explain to me how, if Department A is 10 per cent. behind, and Department B is 10 per cent. behind over a given year, how both departments combined can be 30 per cent. behind over their both business records? I think that is a very simple and very fair question.

Mr. Martin: Objected to.

Examiner Bennett: I will let him answer, if he has any answer.

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A. I would have to see these figures before I can answer you on percentage.

*By Mr. Albert.*

Q. That is not the question. A. I cannot answer it.

Q. I am asking you to please explain to us the theory by which that can be worked out. A. I cannot answer you.

Q. Well, now, Mr. Miller, assuming that the volume of Department No. 330, 1936, was \$100,000, and assuming that the volume of Department 350 in 1936 was \$100,000,



can you and will you work out for me on the basis of those figures the relative volume for 1935, and then, by comparing them, demonstrate the figures that you have here? A. No, I cannot do that because we have to have exact figures. It is the weighted average.

Q. What do you mean by weighted average? A. I mean it is weighted by the amount of volume that is done in those departments.

Q. In other words, you are referring to what figures are taken? I mean, that is not a mathematical theory, weighted average? A. I don't get you.

Q. That is not a mathematical process of arriving at a conclusion? A. I don't understand you.

Q. That is not the name given to any particular formula of arriving at a conclusion, is it? A. Well, it is a method, yes.

Q. What is that method? A. That your volume figures in each of its component parts have a direct bearing on the total percentage.

Q. Well, now, can the volume figure in each of its component parts, when taken together, be greater than the addition of those parts? A. I do not know.

Q. Would you say that where Department A is 10 per cent. behind its previous year, and Department B is 10 per cent. behind its previous year, a taking of the weighted average reveals a figure in excess of the individual percentages of those departments, that that is an unusual circumstance?

Mr. Martin: Objected to. Pure speculation.

Mr. Albert: I think it is perfectly proper in the light of what I am running up against, your Honor. I want to show you how clear these figures are.

Examiner Bennett: Well, I will let him answer. Go ahead.

The Witness: Will you read the question, please. (Question read.)

The Witness: I cannot answer that without knowing volume figures.

*By Mr. Albert.*

Q. Well, now, have you ever come across any particular result of that kind before very often? A. I don't recall.

Q. You do not recall ever having come across it before?

A. I do not recall either having come across it or not having come across it.

Q. Did you not testify just a little while ago that you had seen cases of that kind? A. No.

5573 Q. Well, now, will you please read back the record, or is it your Honor's recollection of the fact that he had come across such cases perfectly clear?

Examiner Bennett: Well, if it is in the record it is in the record. That is all there is to it.

*By Mr. Albert.*

Q. Do you want to deny that you had testified that you had seen cases of results of obtaining a weighted average?

A. I don't recall.

5574 Q. In which it appeared that Department A had been 10 per cent. behind in its volume over a particular year, and Department B had been 10 per cent. behind in its volume in a particular year, and that the combination of the two departments revealed that they had 30 per cent. difference there, the combined reports? A. I do not recall.

Q. You do not know? A. I do not recall.

Q. You do not know whether you testified to that or not? A. I do not recall.

Q. Do you mean you do not know one way or the other? A. I mean I do not recall.

Mr. Albert: Well, now, if it please the Court, I think it is a most equivocal answer that the wit-

ness is trying to hide behind. I think it is very simple for him to tell me what he means by "I do not recall." Whether he means that he did say it, or whether he means he does not remember whether he said it or not. I think that is fair.

Examiner Bennett: I think it has a very definite meaning.

The Witness: I do not remember, if that is better.

*By Mr. Albert.*

Q. So that you do not remember now what you testified to only about ten minutes ago? A. Not the exact wording, no.

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Q. I was not asking you the exact wording. I am asking you the substance as to whether you had not testified that you saw figures exactly or substantially revealing the queer result about which I have been speaking, assuming merely for the sake of argument, that it is a queer result. I don't want you to agree with me that it is a queer result.

Mr. Martin: I think the witness has answered the question.

Mr. Albert: He has not.

Mr. Martin: Just a moment, Mr. Albert, until I am through. He has already asked him two or three times whether he said it or not, and the witness has said two or three times he does not recall whether he did or not.

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Mr. Albert: He has just testified that his testimony was in reference to the fact that he did not use the specific language. He is obviously hiding behind an equivocation or something of that sort. The same kind of a situation we were presented

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*W. E. Miller—For Commission—Cross.*

with when a witness was presented a book and he said he had not read that particular book, a book that was of general circulation.

Examiner Bennett: You have made the record. You may proceed.

Mr. Albert: I am awfully sorry, your Honor, but I did not get your ruling on that question.

Examiner Bennett: I say, you have made a record on that, why not go ahead?

Mr. Albert: Very well, your Honor.

Examiner Bennett: The record shows what the witness testified to, and if there is any discrepancy—

5579

*By Mr. Albert.*

Q. Let me ask you, Mr. Miller, have you ever seen any figures presenting the same results as I have here, picked out with respect to Departments 330, 335 and 350, and the total taken of all? A. I don't recall of having seen any.

Q. You have seen quite a few figures in your time? A. Right.

Q. And you have worked on quite a few figures? A. Yes.

5580

Q. So that unless we have the exact dollar volume of the sales with respect to what these percentages mean, these figures are meaningless to us, aren't they? A. No. I don't think so.

Q. Mr. Miller, you have testified that the figures on Exhibit 473, representing the combined percentages as affecting Departments 330, 335 and 350, are a weighted average. I think that is the term you used. A. The combined figure?

Q. Yes. A. That is right.

Q. Are the figures given individually for each department also a weighted average? A. No.

Q. Just how do you weight— A. By the volume.

Q. —the three departments when you bring them in?

A. By volume.

Q. Well, do you consider only the volume when you weight the figures? A. I don't get your question.

Q. Do you use any other criterion in arriving at the figures represented in the last line of Commission's Exhibit 473 than you did in arriving at the figures in each department individually? A. No.

Q. None whatsoever? A. No.

Q. Then what is all this talk about a weighted average?

A. Simply that the percentage varies. The percentage of an increase or decrease for the total of the three varies as the volume between the three varies. It is an arithmetic average if you prefer to call it that, and we usually introduce another figure—

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Q. There are no other elements taken into consideration in arriving at the percentage decrease between 1936 and 1935 of the combined combination of Departments 330, 335 and 350 than were taken into consideration in arriving at the percentage increase for each department individually; was there? A. No.

Q. None whatsoever? A. No.

Q. Then we have a simple arithmetical computation to be made in adding Departments 330, 335 and 350; is that correct? A. The total of the three.

Q. Right? A. The same.

Q. Let us assume that Department 330 for April of 1936 did a total business of \$100,000 on the basis of the figures presented in Commission's Exhibit 473, what was the total volume of business done in that department in 1935, roughly speaking? Don't carry it out to cents. A. I know what you are getting at. It won't work.

5583

Q. Well, let us see if it will work. A. It won't work, because your percentage varies as your volume between departments varies.

Q. Let us see if we can get some basis of working on it. A. Perfectly willing to do it if you want to go through a mathematical computation here.

Q. Well, can you set up any hypothetical figures? A. No, I would have to have the actual figures.

Q. I don't want the exact figures of your volume, but will you let me work with figures which bear the same proportion in variation as do your actual figures of your departments? A. I will attempt to get those for you.

Q. Don't you know them now? A. No.

Q. Will you bring them in with you to-morrow? A. I will attempt to get them, yes.

Q. You understand what I want? A. I understand what you want.

Q. I don't want the exact figure. A. I understand what you want.

Q. Just the exact proportion. A. I can multiply them by two or three or anything else, as long as I multiply them with the same figure.

Q. So that they bear the same proportion as they originally bear? A. I know what you want.

Q. Then we will all do a little arithmetic to-night.

Examiner Bennett: Take a recess of ten minutes.  
(There was a short recess taken.)

Examiner Bennett: Be in order, please. You may resume.

By Mr. Albert:

Q. Now, merely in order to solidify the record, your Honor, I wish to ask the witness the following question: That if I had asked you with respect to Departments 360, 371 and 380 for the dollar volumes for 1935 and 1936 for the months of February, March, April, May and June, am I correct in stating that your answers would have been the same, to the effect that you knew the figures when the



exhibit was prepared, that they were available, that they were in your monthly merchandise reports, and that you did not wish to provide them for me? A. That is correct.

Q. Now, in the light of what has been disclosed with respect to the exhibit, Commission's Exhibit No. 473, will you now, Mr. Miller, volunteer to bring in the actual monthly figures with respect to Departments 330, 335 and 350? A. No, I can't bring the actual figures.

Q. What was the total volume of purchases of dresses in Department No. 330 for the year 1935?

Mr. Martin: That is objected to, your Honor.

Mr. Albert: Now, if it please the Court, the witness has testified here—the question is withdrawn.

5588

By Mr. Albert.

Q. You are the divisional merchandise manager of the ready-to-wear dress department of William Taylor & Company; aren't you? A. Yes, sir.

Q. You have been such for sometime past? A. Right.

Q. You were there during 1935 and in 1936? A. Yes.

Q. What was the total volume of dresses purchased by William Taylor & Company during 1935? A. Of dresses?

Q. Yes. A. I haven't those figures with me.

Q. Are they available? A. They are.

Q. Will you provide them for me? A. No.

Q. When did you last know those figures? A. Oh, recently, within the past week, I would say.

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Q. You looked them up within the past week? A. That is right.

Q. Where are those figures contained in the records of William Taylor & Company? A. In the monthly summaries.

Q. Well, now, you testified that 60 per cent. of all dresses purchased in the various departments are Guild dresses. Do you recall that testimony? A. No; I didn't testify as to that.

5590

*W. E. Miller—For Commission—Cross.*

Q. What did you testify to? A. I testified that between 60 and 75 per cent. of all dresses covered by Guild price lines came from Guild resources.

Mr. Albert: Will you repeat that, please?  
(The answer was read.)

*By Mr. Albert.*

Q. When you say 60 to 75 per cent. of all dresses covered by the Guild price lines, what do you include within the price line? A. The price lines covered by Guild houses.

5591

Q. What is that price line? A. It was in the latter part of 1935 from \$6.75 cost up.

Q. How much business do you do—the question is withdrawn. What is the volume of dresses purchased by Taylor below \$6.75? A. I haven't got that figure with me.

Q. Cost. Have you those figures available? A. They are.

Q. Are they in your William Taylor & Company monthly reports? A. Not in that exact form.

Q. In what form are they? A. In the form that is represented by our price line divisions as indicated by the departmental set-up.

Q. If you asked for the figures with respect to what I have just asked you of any clerk in William Taylor & Company, what would you refer to and ask for? A. I beg your pardon?

5592

Q. If you asked an employee of William Taylor & Company for the figures with respect to the total purchases under \$6.75, what would you ask him for? A. I would ask him for the total purchases of \$4.75 and \$5.75.

Q. What records would you specifically refer him to? Would you refer him to a particular book? A. I would have to compute that from our unit control. We would compute it from our unit control.

Q. Then your unit control book then is the only physical record that contains those figures? A. That is correct.

Q. Is that here in Cleveland at the present time? A. Yes.

Q. Will you bring those figures for me and compute them to-morrow? A. No.

Q. Well, now, Mr. Miller, as divisional merchandise manager of William Taylor & Company, will you give me your estimate of the total volume of dresses purchased in the price lines that you have referred to? A. May I ask what price lines are referred to there in your question?

Q. \$6.75 and up. A. I cannot give you that figure off-hand. I would have to compute it.

Q. Well, I don't want it in exact figures. Can you give me an estimate of it? A. I can't give you an estimate, no.

Q. Well, now, I show you Commission's Exhibit 471. Does that figure represent 60 per cent. to 75 per cent. of all merchandise purchased by William Taylor & Company within those price lines? A. Yes.

Q. It does? And is it your contention that the whole amount of dresses purchased by William Taylor in those particular price lines does not exceed approximately between \$73,000 to \$91,000? A. That was the way to work—the way—that is the way it would work out, yes.

Q. So that with regard to any merchandise which may be affected by the Guild price line, the total amount of dresses that might possibly be affected by any program of the Guild, does not exceed \$100,000 in purchases of William Taylor Son & Company? A. That is it. That is the cost.

Q. Cost? A. That is correct.

Q. Now, Mr. Miller, will you be good enough to tell the Court the precise method in which you arrived at the figures? A. These figures?

Q. Yes. Where you took them from. A. Ledger sheets.

Q. Ledger sheets? A. Accounts payable ledger sheets.

Q. Let me see if I am right. So that if an order was given to Herman Beistell for \$200, \$300 and then \$207, that reflects the total figure here of roughly \$707; is that correct? A. Well, this refers, of course, to merchandise received, not merchandise ordered.

Q. This does not refer to your merchandise ordered?

A. No, sir; it refers to merchandise received.

Q. Well, how much of the business in Guild lines contracted for during 1935 and the 1936 period up to the red carding in dollar volume would you say has been omitted from this exhibit? A. I wouldn't know. I wouldn't have any way of estimating that.

Q. Would you say it was substantial or letter? A. Of course this record does not include any of the February, 1936, purchases.

Q. It doesn't include any of the February, 1936, purchases? A. No, because that only goes up to February 1.

Q. It does not include, therefore, any of the merchandise referred to in Commission's Exhibit 472? A. That is right.

Q. Well, now, then are there Guild houses and are there orders that were placed by William Taylor & Company which find no record either in Commission's Exhibit 472 or Commission's Exhibit 471? A. Only if they were canceled before completed.

Q. Then there were orders placed by William Taylor & Company before the red carding which were not fulfilled by reason of the fact that William Taylor & Company canceled the orders? A. By reason of the fact that they were past due and canceled.

Q. Not referred to in Commission's Exhibit 472 or Commission's Exhibit 471? A. I am covering the whole period, you understand, from February 1, 1935, through Febru-

ary 1, 1936, in the normal course of business. We always cancel orders when they become past due a certain length of time.

Q. Well, were any of those orders within the period of January, 1936, and February, 1936? A. I can't say.

Q. Will you look it up for me and let me have the figures on it? A. I don't quite get your point. I am sorry.

Q. There are obviously, from your testimony, certain orders placed with Guild houses that are not recorded in Commission's Exhibit 472, and are not recorded or listed in Commission's Exhibit 471? A. Those were only orders that were delivered between February, 1936, and February 17, 1936, or had been shipped prior to February 17, 1936.

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Q. That is Commission's Exhibit 471? A. No. They are not included on that. To make myself clear, any additional orders that do not appear on 472 or 471 would be— or any additional purchases, let us say, would be merchandise that was on order as of February 1, 1936, from Guild resources, and was received by us between the period February 1, 1936, and February 17, 1936.

Q. So that—the question is withdrawn. Now, you have entitled this exhibit, "Guild Purchases, February 1, 1935, to February 1, 1936"; haven't you? A. That is right.

Q. Shouldn't that be entitled "Merchandise Delivered from Guild Resources"? A. Not in our terminology, no. We do not consider purchases in our records until it is actually received in our store.

5601

Q. Well, how are we to know that? A. That is common terminology in all of the stores.

Q. You made the distinction when I used the word "purchased" as to whether or not the goods had been purchased, you made the distinction that "No, they weren't purchased, this refers merely to goods that were purchased and delivered." If it is a common terminology— A. In what connection?



5602

*W. E. Miller—For Commission—Cross.*

Q. —why did you correct me if it is commonly understood? A. In what connection?

Q. In referring to this exhibit.

Examiner Bennett: Well, you are arguing over terms. It is a matter of law. I think the term "purchase" has a very definite meaning in law.

Mr. Albert: Very well, your Honor.

Examiner Bennett: I don't know as this gentleman has qualified as a lawyer.

*By Mr. Albert.*

5603

Q. Well, coming back to the original question——

Mr. Albert: I don't mean to bring up the legal question, your Honor. I merely wished to show that the title did not adequately reflect the fact.

Examiner Bennett: I think probably this witness testifies that that is the practice in his business. The legal definition of it will indicate that that would be an entirely legitimate use of the word "purchase."

Mr. Albert: Well, then——

Examiner Bennett: That is as I read the decisions about purchase. It includes delivery.

*By Mr. Albert.*

5604

Q. Then in order to make certain of this, Mr. Miller, we are to understand that Commission's Exhibit 471 does not reflect goods that were ordered but reflects the total dollar volume of goods that were ordered and actually delivered; is that correct? A. That is it.

Q. Now, to come back to the illustration of Mr. Beispell, you say that if you gave Mr. Beispell three orders of \$200, \$300 and \$207 that that would reflect itself and is reflected in the figure in Commission's Exhibit 471, which



states that the cost figures of goods purchased from Herman Beispell was \$707 and some cents; is that correct?

A. That is correct.

Q. Do you in any way take into consideration, in the compilation of that figure, the amount of returns on that purchase? A. Yes. This is the net figure.

Q. Well, now, I just asked you whether or not the figure that you took off was the actual amount of the order. A. I said no.

Q. And you said what? A. I said no, it was not the actual amount of the orders.

Mr. Albert: Well, now, let's refer back to about four or five questions.

5606

(Record read.)

By Mr. Albert.

Q. Were those your answers?

The Witness: May I have that last part read again?

(Record again read.)

The Witness: I understand by that question you mean that the orders are naturally reflected in the receipts. In other words, he not shipping us merchandise that we don't order; on the other hand, we don't—we are not bound to take all merchandise against that order if he violates that contract in regard to the delivery dates.

5607

By Mr. Albert.

Q. Well— A. That part of it which he actually delivers in accordance with the contract would naturally reflect itself in this purchase record. That is what I mean.

Q. Yes. But, if after the receipt of that \$707 worth of merchandise from Mr. Beispell any returns were made

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*W. E. Miller—For Commission—Cross.*

by William Taylor & Company, that is not reflected in this figure, is it? A. Yes, it is.

Q. Well, how? A. That is the ledger card on these manufacturers recording both incoming merchandise and any returns to manufacturers. It does not take into consideration discount. It is the gross cost figure.

Q. Well, didn't you say a moment ago that this was the net figure? A. I said it was the net purchase figure, but I had nothing to say about the net cost figure. There is a distinction there, as you know.

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Q. Yes. Well, but in answer to my question—I asked you whether or not when you gave an order for \$200 worth of merchandise, and you gave an order for \$300 worth of merchandise, and you subsequently gave another order for \$207 worth of merchandise in 1935, and according to your testimony with respect to Commission's Exhibit 471 that amount was delivered to you, does not that figure reflect the exact order that was given to Herman Beispell & Company for \$707? A. No.

Q. Without taking into consideration the total amount due to returns? A. No, it does not.

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Q. Well, then, will you please explain exactly what the figure opposite the name means (indicating) and how you arrive at that figure? A. The figure opposite these names means total amount of merchandise, gross cost of that merchandise delivered to us and entered on our journal sheets, our ledger sheets of the accounts payable office during the period February 1, 1935, to February 1, 1936, less any returns that were made to that manufacturer during that same period.

Q. Less discount? A. Discounts are not considered. That is the gross cost.

Q. So then, in so far as the amount of dollar volume of purchase prior to delivery is concerned, this figure of \$54,492 would represent actual combined orders of Taylor to the various manufacturers of, let us say, \$75,000 worth of goods? A. It would hardly be that much.

Q. Well, I am not taking a specific figure? A. It would be more than that amount.

Q. It would be more than this amount? A. That is right.

Q. Now, when you investigated the figures with respect to the comparison of Guild sources in the price lines of the Guild sources with other sources, did you use the same basic figures? A. I did.

Q. Have you any opinion as to whether or not the percentage of returns from sources other than Guild sources is greater than the percentage of returns to Guild sources? A. I think they are comparable.

Q. They are the same? A. Approximately. I have no reason to think otherwise.

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Q. And that you testify to from your experience as divisional merchandise manager of William Taylor Company? A. Yes.

Q. Would you say that since the percentage of returns does not vary between the two, that the quality of the merchandise from other sources is equal to the quality of the merchandise from Guild sources? A. I don't think that is a fair assumption necessarily.

Q. Pardon me a moment.

Mr. Albert: Has your Honor any objection to our putting in photostats of the exhibits we put into evidence this morning, rather than the originals?

5613

Examiner Bennett: I have no objection.

(There was a discussion off the record.)

Examiner Bennett: You can arrange with the Reporter to have them marked.

Mr. Albert: The photostats have been marked to conform to the originals.

Examiner Bennett: All right. Unless the Commission's attorney objects, I have no objection.

Mr. Albert: Correct me if I am wrong.

The attorney for the Commission has no objection to photostatic copies being placed in evidence with respect to Respondents' Exhibits 24, 25, 26, 27, 28 and 29 with the expressed stipulation from counsel for the respondent that the pencil notations on Respondents' Exhibit 24 are not to be considered evidence and only the typewritten matter of the letter will be considered evidence. Is that right?

Mr. Martin: Yes.

*By Mr. Albert:*

5615 Q. Now, Mr. Miller, referring to Respondents' Exhibit 24, being letter from you to Fashion Originators Guild, was that letter written in response to any communication or any request for information from the Fashion Originators Guild? A. No.

Q. None whatsoever? A. Not to my knowledge.

Q. Had you given them any information prior to sending that letter of the orders which were outstanding at the time of the red carding? A. Not to the Fashion Originators Guild.

Q. You had not? A. No.

Q. Through anybody? A. We had given it to individual manufacturers but not to the Guild.

5616 Q. Did anybody on your behalf give any information to the Fashion Originators Guild, to Mr. Post or to Mr. Golby, with respect to the orders outstanding at the time of the red carding? A. Not that I know of.

Q. Was any discussion had with either Mr. Post or Mr. Golby of the Fashion Originators Guild with respect to orders outstanding at the time of the red carding, either by yourself or by any person acting on behalf or with the authority or consent of William Taylor & Company? A. I do not know. I do not know of anyone else that did.

Q. Did you receive any information in the ordinary course of the business of William Taylor Company that any discussion was had on behalf of the William Taylor Company with the Fashion Originators Guild with respect to orders outstanding at the time of the red carding?

Mr. Martin: I object. He has already testified that he did not have any conversation with them, and that so far as he knows nobody else did, and he has no knowledge of it.

Mr. Albert: We still have not got, as far as he knows nobody else did, and I am merely adopting the tactics of the Commission in asking if he received it in the course of his business.

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Mr. Martin: He has testified that he does not know, that so far as he knows no one did. I think it is a perfectly full and complete answer to your previous question.

Examiner Bennett: What is the last question.

(Question read.)

Examiner Bennett: He may answer.

The Witness: What was the question?

(Question read.)

The Witness: I do not know of any.

By Mr. Albert.

Q. Would you have been informed of any in the ordinary course of business had there been any? A. Yes.

5619

Q. Well, now, as a matter of fact, Mr. Miller, don't you know that there were various conferences held by persons representing William Taylor Company with the Fashion Originators Guild with respect to the fulfilling of these orders? A. (No response.)

Q. Don't you know as a matter of fact that Mr. Bergdahl had conferences with the Fashion Originators Guild with Mr. Post and Mr. Golby with respect to this matter?

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*W. E. Miller—For Commission—Cross.*

Mr. Martin: I object.

Examiner Bennett: Sustained. There is not any indication here that this gentleman is in any way related to Mr. Bergdahl.

Mr. Albert: Very well. I will show the relationship if it please the Court.

Examiner Bennett: I don't think we will go into a matter of that kind on cross-examination, cross-examining on cross-examination.

Mr. Albert: If your Honor please, may I be permitted to refresh the recollection of the witness with respect to it? I think I can refresh his recollection of it.

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Examiner Bennett: The matter has not been gone into in connection with direct examination. There is nothing in the record to indicate at all that this man was a representative of this particular concern. I will sustain the objection. If you want to put on Mr. Bergdahl in your direct case to testify as to his being authorized by this concern, Taylor & Company, to look after this business for them, why, that is all right.

Mr. Albert: I am sorry. I did not follow that last remark.

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Examiner Bennett: I say, if you want to put on Mr. Bergdahl as your own witness, when it comes to presenting your case, if Mr. Bergdahl was authorized to represent this concern and did, in fact, represent them, I think you are entitled to do so.

Mr. Albert: Well, I feel quite certain before we are through with the case that the Commission will undoubtedly call Mr. Bergdahl.

*By Mr. Albert.*

Q. Now, in response to Respondents' Exhibit 24, you received Respondents' Exhibit 31; is that not so? A. That is right.



Q. And what do you understand to be the meaning of that telegram? A. I understood to be the meaning of it that it would be necessary for us to take all orders, to accept all merchandise against all orders outstanding on February 17, the date, I believe, we were red carded, according to the evidence, if we were to have any of them.

Q. Well, now, as a matter of fact, did you not believe by this letter that the Guild was of the opinion that you had attempted to pick out only certain manufacturers mentioned in your letter of March 11, and that in response to that letter they said that if you desire all merchandise available, you cannot discriminate on individual shipments or manufacturers? A. No, I did not.

Q. You did not understand that to be so. Well, now, is it not a fact that in response to this letter, Commission's Exhibit 31, you sent the following telegram: "Orders listed in letter cover all merchandise now outstanding with your members"? A. That is right.

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Q. So that what you attempted to convey to the Fashion Originators Guild was that you had not chosen any particular manufacturers from those whose orders were outstanding, but that the four represented in Respondents' Exhibit No. 24 were the only ones from whom orders were outstanding at that time; is that not so? A. That is correct.

Q. But except for the fact that you used a departmental cancellation, which you did not inform anybody of, and which nobody knew anything at all about as regards the cancellation, there were other orders outstanding undelivered at the time that you sent this telegram, were there not?

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Mr. Martin: I object, your Honor, as being cross-examination on cross-examination. All these were brought out by my friend.

Mr. Albert: To the contrary, your Honor, they are matters that refer to his direct examination.

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*W. E. Miller—For Commission—Cross.*

Examiner Bennett: Overruled. I will let him answer.

The Witness: Read the question.

(Question read.)

The Witness: I cannot answer that definitely. I know that we used what we call "House Cancellation" on some orders. What they are, I am not in position to testify now.

*By Mr. Albert.*

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Q. Now, is it not a matter of fact that you contended as regards these unfilled orders, that by reason of the fact that you had put on your house cancellation of the order, you were not required to take the orders from the manufacturers; is that not so? A. I contended nothing about it.

Q. Well, what is the meaning of this telegram, Respondents' Exhibit No. 28, as follows: "Thought my wire plus letter explained clearly merchandise we desired delivered from your members. Orders specified all that are outstanding at the present time. Other orders placed prior to February 17 were canceled when past due and placed with other manufacturers. Impossible to accept merchandise covered by these canceled orders." What did you mean by that? A. I think it is clear.

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Q. Well, I am a little dense. Would you mind explaining it? I mean, I am in Mr. Haycraft's class now. The matter seems dense and I cannot figure it out.

Mr. Martin: You do not mean Mr. Haycraft.

Mr. Albert: I mean Mr. Martin.

The Witness: It simply means that in accordance with our records there were no other orders outstanding on our files except those that were covered in our letter of March 11.

By Mr. Albert.

Q. But who knew that they were canceled aside from yourself? A. I am not in a position to testify which ones were entered on house cancellation and which were not. If you would like that information I will get it for you.

Q. At the present time you do not know who was notified of the cancellation? A. I do not know which manufacturers were definitely notified and which were not.

Q. Can you tell me how long after the delivery date of the orders which were unfulfilled you filled those orders with other manufacturers? A. No, I cannot.

Examiner Bennett: Is that your regular course of proceeding? That is, canceling orders as soon as they are due?

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The Witness: Yes, within a reasonable length of time after they become due, if they are still unfulfilled, we cancel them.

Examiner Bennett: That is true, is it, generally about your business?

The Witness: Yes, it is.

Examiner Bennett: I see. Very well.

By Mr. Albert.

Q. What is your usual course of business, Mr. Miller, with respect to cancellation of orders? A. Well, it depends entirely upon the type of order, and whether or not the manufacturer had indicated a willingness to deliver that merchandise or an intention of delivering it. If it is an order that is past due, we usually cancel it within a reasonable length of time; sometimes due date, it is past due; sometimes it will be a week, sometimes it will be as long as two weeks. Other times, when we have an indication from the manufacturer that the order will not be delivered, we cancel it then and there.

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*W. E. Miller—For Commission—Cross.*

Q. Now, isn't it a matter of fact, Mr. Miller, particularly with respect to the price lines which are the subject of immediate discussion, that no cancellation is operative until notice thereof is given to the manufacturer? A. Unless the manufacturer gives us notice, which we had had in certain instances in the Guild merchandise. In other words, that they had told us that they could not deliver.

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Q. You had the same notice of an item in Women's Wear that the Guild had red carded you, from which you assumed that you could get no merchandise from Guild houses with respect to Bernard Appel, Milton Altmark, William Bass and Mary Lee; didn't you? A. Yes.

Q. Why didn't you cancel theirs? A. I don't know. We didn't cancel any of those orders until they were past due. That is all I can tell you, either on a house cancellation or a mail out. If the information relative to house versus mail-out cancellation is of great importance, I can bring that in definitely in the morning for you.

Q. On cancellation of an order, which you give notice to a Guild house—when you give notice to a manufacturer, what sort of notice did you usually give of the cancellation? A. It is a formal cancellation blank similar to our order blank except marked "Cancellation" and specifies the order number to which it refers along with other information pertaining to that order.

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Examiner Bennett: It is our usual time for adjournment.

Mr. Albert: Very well, your Honor. We can take this up from here to-morrow.

Examiner Bennett: You have further cross-examination?

Mr. Albert: I think so with respect to this particular item, your Honor.

Examiner Bennett: I beg your pardon?

Mr. Albert: I say, I am through with respect to this particular field.

Examiner Bennett: All right. We will adjourn. Do you want this witness to-morrow morning?

Mr. Albert: I beg your pardon, your Honor?

Examiner Bennett: Do you want this witness to-morrow morning?

Mr. Albert: Oh, well, we will just about be starting with him to-morrow morning, your Honor. I mean, after all, I have only been examining him with respect to his mistakes.

The Witness: Ha, ha, ha, ha, ha.

Examiner Bennett: All right. We will adjourn until to-morrow morning at 10 o'clock at this place. I will ask the witness to be present for further examination.

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The Witness: 10 o'clock to-morrow morning?

Examiner Bennett: Yes, 10 o'clock.

(Whereupon, at 4.40 o'clock P. M., August 12, 1936, the hearing in the above-entitled matter was adjourned.)

5637

Court Room No. 307,  
Federal Building,  
Cleveland, Ohio,  
August 13, 1936.

Met, pursuant to adjournment, 10 A. M.

Before: JOHN W. BENNETT, Examiner.

(Same Appearances.)

PROCEEDINGS.

5639 Examiner Bennett: Be in order, please.  
You may resume.

Mr. Albert: If it please the Court, before we resume questioning to-day——

Mr. Miller: Your Honor——

Examiner Bennett: I beg your pardon?

Mr. Albert: —I have a slight statement I wish to make.

Mr. Miller: May I——

Mr. Martin: Wait.

Mr. Albert: If you will just wait a few moments, Mr. Miller.

On the hearings yesterday, Mr. Miller, representing William Taylor Sons & Company, presented various figures, ostensibly representing percentages of increase and decrease of various departments compared with their 1936 and 1935 volume.

5640 Examiner Bennett: Yes.

Mr. Albert: He also presented, or, rather, testified to the fact that in the price line covered by Guild sources, William Taylor Sons & Company used 60 per cent. of their total volume of merchandise in those particular price lines.

Examiner Bennett: Yes.

Mr. Albert: He also presented various other figures without giving the basis or the foundation for computing the percentages which have been testified to in evidence.



I believe that the witness also acknowledged that with respect to the itemization of these various things as contained in certain exhibits, which are now in evidence, certain omissions appeared in those exhibits.

Now, in the light of that fact, I ask your Honor to call upon the attorneys for the Federal Trade Commission, pursuant to the power vested in them for the orderly and fair presentation of evidence upon this hearing, in order to obviate the necessity, the expense, and the discomfort of all parties concerned, coming back here to Cleveland in order to get the information which must be gotten in order to show the basis for those figures, and, as an evidence of good faith on the part of the attorneys for the Commission, that they are seeking to present all of the facts and the figures, and not to present a biased case, I ask your Honor to demand of the attorneys for the Commission that they subpoena the records of William Taylor Son & Company, and produce the figures which form the foundation of the testimony of Mr. Miller, and that in default of their presenting the figures which form the foundation of that testimony, that your Honor strike from the record all of this witness' testimony.

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The Federal Trade Commission's attorneys have been protesting at the extraordinary length of these proceedings, that their schedule has been delayed. It seems to me that if the Commission insists upon assisting William Taylor Son & Company in not disclosing the figures which form the basis of their computations, it will be necessary for all parties concerned to come back here to Cleveland, with added expense on everybody, and certainly additional time, which seems to be the main concern of the Federal Trade Commission's attorneys, and I say that if they are sincere in that regard alone, aside from the question of the competency of the evidence that has been presented, but in order to be consistent with their argument that these proceedings are not advancing with the speed which

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they think they should advance, that in order to save all of the time of coming back to Cleveland, the Commission, pursuant to the Federal Trade Commission Act, Section 10, should demand of William Taylor Son & Company that they produce those figures and make them available to the Commission for investigation.

5645 Mr. Martin: If your Honor please, as counsel for the respondent has already been advised, not once but half a dozen or more times by your Honor, if they desire those figures there is a proper time and a proper place, and a proper method, by which they can secure the figures. In the meantime counsel for the Commission respectfully submit that it will conduct its case according to their view of it and not in accordance with instructions from counsel for the respondent.

Examiner Bennett: I might say that Mr. Weisman was advised that he might put in his testimony at all these places immediately on the closing of the hearings by the Commission, and he said that he did not care to do so, and we have let it go on. At least, that is true of the hearings in other than in New York and Boston and Philadelphia, which were close by to the headquarters, and I presume that that still stands.

I, of course, will say that if he had indicated otherwise, why, he would have been given an opportunity, and we would have arranged for that, but as to the request of the attorney, it is denied.

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If the Commission chooses to put in that testimony in that form, while the evidence is not so strong as it would be if the figures were here—however, in the judgment of the Examiner it is competent evidence, and he sees no reason why it should be—why the witnesses should be compelled—in behalf of the Commission, to disclose what they consider to be damaging facts, damaging to their business.

The witness has indicated that he wishes to correct some errors in his testimony of yesterday, and the Examiner now gives him an opportunity to do so.

*W. E. Miller—For Commission—Cross.*

Mr. Albert: May I have just a brief word in reply, your Honor? May I point out to your Honor—

Examiner Bennett: Well, what are you going to debate? The matter of getting that evidence?

Mr. Albert: I merely wish to show your Honor the difference between what is occurring here in Cleveland and what has occurred in Boston and Philadelphia. In Boston, New York and Philadelphia we were given volume figures, plus the percentages.

Examiner Bennett: Yes—well, I am not talking about that.

Mr. Albert: In Cleveland we are only talking about percentages. 5648

Examiner Bennett: Well, I am not going to hear any more argument on that.

Mr. Albert: Very well, your Honor, exception.

Examiner Bennett: You may have your exception.

W. E. MILLER, resumed the stand and testified further as follows:

*Cross-examination (continued).*

Examiner Bennett: You may make such questions as you have to make if you care to do so.

The Witness: Your Honor—

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Mr. Albert: If it please the Court, may I make objection to the witness making corrections in his testimony, and ask to be permitted to continue with my cross-examination, and if the Commission wishes to rehabilitate the witness on redirect examination, I think that is the proper place for it.

Examiner Bennett: Yes. Well, I am going to give him an opportunity right now to correct his testimony.

5650

*W. E. Miller—For Commission—Cross.*

Mr. Albert: Exception, your Honor.

Examiner Bennett: You may have it.

The Witness: Your Honor, with reference to Commission's Exhibit—I believe—473, in which are given percentage increase and decrease figures for the store as a whole and for various departments which occur through February, through June of 1936, as compared to February through June, 1935. I find upon further personal investigation that the total figures, for total better dresses, that is, Departments 330, 335 and 350 for the month of April, 1936, as compared with the month of April, 1935, was inaccurate.

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That total figure, instead of being 20.72, as I get it here—it is blurred—should have read a decrease of 6.91.

Examiner Bennett: What?

The Witness: 6.91 decrease. I personally have checked every other figure in this exhibit against the actual monthly record figures of our concern and find them to be correct. The figures at the bottom of this page, which are the total of the three departments in question, were computed in addition to the monthly record figures. I personally have checked each of those computations and can testify as to the fact that they are now correct.

5652

*By Mr. Albert.*

Q. Well, now, you also testified that they were correct yesterday, didn't you, Mr. Miller? A. I did.

Q. And you found that you were mistaken? A. I did.

Q. You also testified yesterday in response to the direct questions from Mr. Martin that you had previously personally checked these figures; is that true? A. I don't believe that is correct, sir.

Q. Well, now, didn't you testify in response to a question from Mr. Martin that you had personally prepared the exhibit? A. I don't believe so.

Q. You are quite certain of that? A. I don't believe so. The records, I think, would show that.

Q. I mean, you are not certain of what you testified to?

Mr. Martin: I don't think there is any evidence of that sort in the record at all.

Mr. Albert: Well, let me ask about it, if it please the Court.

Mr. Martin: The record will show what he testified to.

Mr. Albert: May I be permitted?

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Examiner Bennett: The Examiner recalls one document that he prepared himself.

Mr. Albert: Yes, your Honor.

Examiner Bennett: There is a list of names of Guild houses with whom he did business.

By Mr. Albert.

Q. Have you any doubt whether or not you testified yesterday that you personally prepared Commission's Exhibit 473? A. I think the record will show that.

Q. I am asking you. Have you any doubts as to what you testified to? A. I can't answer that question. I can't answer that question. I am sorry.

Q. Well, if you didn't prepare it personally, should there be any doubt in your mind that you didn't?

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The Witness: Would you read that question back?

(Question read.)

Mr. Martin: That isn't the question. That isn't the question you asked him. You asked him whether he had testified. He is replying to that question.

Mr. Albert: No.

*By Mr. Albert.*

Q. Let's start all over again, Mr. Miller. Didn't you testify yesterday that Commission's Exhibit 473 was prepared by you? A. I can't answer that question.

Q. You don't know what you testified to yesterday? A. I think the record will show that.

Q. Now, please answer my questions. Don't you know what you testified to yesterday? A. I think the record will show that.

Mr. Albert: May I ask your Honor to direct the witness to answer that question?

Examiner Bennett: I will ask him to answer.

*By Mr. Albert.*

Q. Don't you remember what you testified to yesterday? A. I am not sure of the wording.

Q. I am not asking you about the wording. I am asking you of the substance. Did you testify that you prepared Commission's Exhibit 473? A. To the best of my knowledge, I testified that Commission's Exhibit 473 was prepared under my supervision and at my request.

Q. Well, now, what was so doubtful about it in your mind up to now?

Examiner Bennett: That is exactly what he testified to yesterday.

Mr. Albert: Well, now, Mr. —

Examiner Bennett: Let's not waste time with it.

*By Mr. Albert.*

Q. Mr. Miller, do you recall this testimony: "By Mr. Martin. Q. I hand you Commission's Exhibit 473 for Identification and ask you can you identify that? A. I can." Up to the present time, Mr. Miller, you have been



particularly discreet in answering questions, haven't you? You have made certain that you answered the question in accordance with what your belief was that the answer should be as to the true facts?

Mr. Martin: I object to that as being immaterial and irrelevant. This witness is under oath.

Examiner Bennett: Well, it is not a question, is it?

Mr. Martin: Sir?

Examiner Bennett: I say, it is not a question, is it? It is a comment. Do you want it to be stricken?

Mr. Martin: I think the question he is asking him is improper. 5660

Examiner Bennett: Well, I didn't think it was a question. I thought it was a comment. Read the question.

(Question read.)

Examiner Bennett: Sustained. I think we can judge Mr. Miller's testimony without asking him further along that line.

Mr. Albert: Exception.

By Mr. Albert.

Q. Do you recall yesterday when I used the word "purchase" you corrected me as to my use of the word and as to the meaning of it, didn't you? A. In one reference, 5661

Q. Yes. And during the time of the examination generally when words were improperly used, or when questions were propounded, you have refused to answer the question until a question was separated, or until the complete meaning of the word was apparent to you: isn't that? A. That is correct.

Q. Now I read further in the examination by Mr. Martin in referring to Commission's Exhibit 473: "Q. What is it?

A. It is a record showing the volume increases or decreases by months through February, through June of this year for the total store for each of the departments mentioned by you and for the total dress departments which constitute women's, misses', women's and misses' better dresses.

Q. Was that prepared by you under your supervision? A. Prepared by me." Do you recall that testimony now? A. I presume if it is in the record I must have given it.

Q. Well, I am reading it to you from the record. Do you recall that? A. I understand. Yes.

5663 Q. Now, then, was your testimony wrong? A. It must have been in that respect.

Q. Isn't it more than "it must have been"? It was, wasn't it? A. The record was prepared under my supervision, not by me personally.

Q. So that, if this exhibit was admitted into evidence on the basis of the fact—

Mr. Martin: Now, if your Honor please—

Q. —that you personally prepared it, it was wrongly admitted, wasn't it?

Mr. Martin: I object to counsel for the Commission picking out one particular question out of the record. As I recall it, there are further questions and answers.

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Mr. Albert: I would only be too glad to read them.

Mr. Martin: Further on that which explained it.

Mr. Albert: I will only be too glad to read them.

Examiner Bennett: That was gone into on cross-examination yesterday very thoroughly. Mr. Miller went into the matter and showed just how it had been prepared.

Mr. Albert: Your Honor recalls those questions.

Examiner Bennett: I recall the cross-examination very thoroughly, and I know just what he testified to on cross-examination. It was exactly what he testifies to now. There is nothing concealed about it.

*By Mr. Albert.*

Q. Mr. Miller, did you compute the percentage of increase or decrease for the combined departments 330, 335 and 350 for the five months, February, March, April, May and June? A. I did.

Q. What is that figure? A. You mean as a total?

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Q. Yes. A. No, I did not.

Q. Can you compute that figure for us? A. Yes, easy.

Q. Have you the figure there? A. No, I haven't.

Q. Have you any figures there which will permit you to compute it? A. No, I haven't. I haven't the dollar figures. I can have it for you this afternoon, if you would like.

Q. Will you do so? A. Yes. That is the same figure, the same percentage figure for the five months as the total? Do I understand you correctly?

Q. Yes. A. (Witness nods head affirmatively.)

Q. That is, you have taken departments 330, 335, 350 for one month? A. That is correct.

Q. Now, take 330, 335, 350 for the five months. A. Five months as a total? I understand.

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Q. And let us know how much they increased their business over 1935. A. Would you also want the same figure for the store as a total? As a whole?

Q. No, I don't think so. A. All right.

Mr. Martin: If your Honor please, I object to any comparison of that sort. The Commission's exhibit shows exactly what it is. It is a compari-

son of those departments for the total stores for each month. Now, if counsel for respondents wants the total for those five months as compared with the total of the store for the five months, I see no objection to his getting it, but otherwise I do object to it.

Mr. Albert: Well, we are up against the same proposition of the Commission refusing to permit evidence to be presented even on the hocus pocus figures that have been presented here in Commission's Exhibit 473.

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Mr. Martin: Now, if your Honor please, there is a limit, I think, to which Counsel for the Commission is required to go. Personally.

Mr. Albert: You have exceeded the limit.

Mr. Martin: Just a minute. I am talking.

Mr. Albert: By the Commission's evidence—

Examiner Bennett: Just a moment.

Mr. Martin: Now, as far as I am concerned, I am sick and tired of counsel being—counsel for the Commission being met on every occasion and willfully and maliciously charged with the suppression of evidence on every occasion because we do not happen to conduct our case as they want us to conduct it.

Mr. Albert: Well, Mr. Martin—

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Mr. Martin: Will you wait until I am through?

Examiner Bennett: Just a moment. Sit down until he is through.

Mr. Martin: I have always.

Examiner Bennett: Haven't you the courtesy to sit down until the gentleman is through?

Mr. Martin: I have always been taught that cases were won by proper presentation of evidence and argument and logic, not by such interpolations and personalities which seems to be the basis for counsel

on the other side trying the case. I respectfully request that the Examiner ask counsel for the other side to address his remarks towards the proper cross-examination and refrain from further personalities and accusations.

Examiner Bennett: What is the question pending?

(Record read.)

Examiner Bennett: Well, it is a matter up to the witness.

*By Mr. Albert.*

Q. Now, Mr. Miller, when did you start preparing Commission's Exhibit 473? 5672

Mr. Martin: I object to that. Immaterial and irrelevant as to when he started preparing it.

Mr. Albert: Foundation question, if your Honor please.

Examiner Bennett: Sustained.

*By Mr. Albert.*

Q. Well, let me put it this way, then: How long would you say it took to prepare Commission's Exhibit 473?

Mr. Martin: Same objection.

Examiner Bennett: Sustained.

Mr. Albert: Exception. 5673

*By Mr. Albert.*

Q. You prepared Commission's Exhibit 473 over the week-end?

Mr. Martin: Same objection.

Examiner Bennett: Sustained.

*By Mr. Albert.*

Q. We left here last night at about 4.30. When did you start correcting the figures of Commission's Exhibit 473?

Mr. Martin: Same objection.

Examiner Bennett: Sustained.

5675

Mr. Albert: Now, if it please the Court, we have here a total of thirty months of figures of six departments. We have five months of figures of the total stores' sales for both 1935 and for 1936. The witness left here last night at 4.30 o'clock, and I presume he took time out for dinner, and yet the witness comes in and tells us that between approximately 6 o'clock last night and 10 o'clock this morning he was able to personally check every single figure that forms the basis of any of the estimates in this particular exhibit. And I think that I should be permitted to examine him to show the practical impossibility of his having done so. If he actually did look at the figures he couldn't have paid very much attention to them.

Examiner Bennett: You may examine him as to the sources.

Mr. Albert: I beg your Honor's pardon?

5676

Examiner Bennett: I say, you may examine him as to sources. I don't see that the matter of time—it is merely a matter of what records he had, what shape they were in, and what assistance he had, and so on. I don't think it throws any light on it at all. It appears that these figures are taken from reports which were in informative form when submitted, and did not entail a great deal of work.



By Mr. Albert.

Q. Well, now, Mr. Miller, do I understand that with respect to each department the figure that you checked was the figure on the merchandise monthly report for the particular month for that department?

Mr. Martin: Objection. The witness has already testified to that question, both on direct and on cross-examination.

Mr. Albert: I am only asking him—

Mr. Martin: And I object on the ground of repetition needlessly.

Mr. Albert: I haven't started to examine him yet, your Honor, on his corrections that occurred since yesterday, which I am now directing myself to.

Examiner Bennett: All right. Overruled.

The Witness: Will you read the question?

(Question read.)

A. That is correct. I checked the figures that were on Exhibit—Commission's Exhibit 473, month by month, with the report—with the monthly statistical report—which shows increase or decrease of volume over the previous year.

Q. So that you compared the final figure contained in Commission's Exhibit 473 with the very identical figure prepared by your clerk or accountant as contained in your merchandise monthly report; is that correct? A. That is correct, except I did it personally this time.

5678

Q: Didn't you say that you personally checked the figures? A. Pardon me?

Q. Didn't you say that you personally checked the figures? A. I said that I personally checked these figures against our merchandise report.

Q. What did you mean just now when you said "except that I personally did not"? A. No. No. I said I personally did check it.

5680

*W. E. Miller—Cross—Commission—Cross.*

Mr. Albert: Oh.

Mr. Martin: He said "I personally checked it."

Mr. Albert: I am sorry. I thought you said "I did not." I am awfully sorry.

The Witness: No.

*By Mr. Albert.*

Q. Now, let us assume that on a particular month, let's say for February in Department 330, when you went into the merchandise monthly report you found the total business was \$10,000. That is just an arbitrary figure, has no meaning at all. A. That is right.

5681 Q. Did you examine the figures to determine how that \$10,000 was computed? A. No, because those figures are—

Q. Now, Mr. Miller, all I want to know is, did you examine them, and the answer is "yes" or "no." A. No.

Q. Did you examine them with respect to any other department?

Mr. Martin: I object to that as being entirely irrelevant and immaterial. He has testified that these figures were prepared from the store records, which were ordinarily used in the course of business, and which were relied upon by the store in the conduct of their business.

Mr. Albert: I pity William Taylor Son & Company if they relied upon that figure of 20.2 for April for the three departments, your Honor.

5682

Mr. Martin: They do not need your pity.

Mr. Albert: Seemingly all that Mr. Miller has done is merely to compare the main figure that was presented to us with the figure that was reached in Commission's Exhibit 473. Anybody could do that and see that nobody made a mistake in the transcribing of the figure, but he has not checked up on the accuracy of that particular figure.

Examiner Bennett: I see.

Mr. Martin: The objection is renewed.

Examiner Bennett: Sustained.

*By Mr. Albert.*

Q. Now, Mr. Miller, you have testified that since you have been with William Taylor Son & Company you have gone down to New York upon various occasions, to the market, to assist in buying, to look over the market, in conformity with your various duties; is that not so? A. I have.

Q. And as a result of that you have become familiar with the various manufacturers in the market; is that not so? A. With those with whom we were doing business, yes. 5684

Q. You have no knowledge of any other manufacturers except those with whom you have been particularly doing business? A. Yes, I have some knowledge, naturally.

Q. Well, to what extent have you a knowledge of the business? A. That would be a difficult question to answer. I do not know.

Q. Have you any knowledge as to how many manufacturers there are that manufacture merchandise in the same price line as the members of the Fashion Originators Guild?

Mr. Martin: Objected to as being irrelevant, immaterial, and outside of the scope of cross-examination. The witness has testified that he did not personally do any buying, that he has supervision over the buyers who did the actual buying, and that he has been to New York on occasions with them to look at stocks, and, further, that he was familiar with the buyers with whom they did business; but otherwise he was not. And I respectfully 5685

submit that that question is not a proper question for cross-examination; outside of the scope of direct examination——

Mr. Albert: If it please the Court——

Mr. Martin: —and is irrelevant and immaterial.

Mr. Albert: Now, if it please the Court, this witness has testified with respect to the injury to William Taylor Son & Company in its inability to maintain its sources of supply. Now, when we seek to cross-examine this witness to show that his source of supply has not been injured, we meet the same philosophy of approach that we met in Philadelphia and Boston to the effect that the witness knows nothing about it, that he did not go down to New York, that he is not a buyer, and that the buyers are the ones who are to testify as to that.

5687

When I sought yesterday in anticipation of this very thing to inquire where the buyers were, I was met with the proposition that one buyer is presently in New York and that the other was on her vacation somewhere.

Now, if Mr. Martin believes sincerely that this witness can give us no information as regards his ability to tap sources of supply, then I say that in fairness to the respondent, and in fairness to the Commission, this witness' entire testimony with respect to sources of supply should be stricken until such time as the Commission brings in people who are competent to testify as to what the sources of supply were, as to how they were injured by any action of the Fashion Originators Guild, and people who can entirely answer and demonstrate the contentions of the respondent, or, rather, not demonstrate, but give reply to the questions to the attorneys for the respondents, demonstrating that their sources of supply have not been injured.

5688

Mr. Martin: If your Honor please, the question of source of supply is a matter of defense. If the respondents seek to show that there were ample and plenty of sources of supply available to this witness for securing merchandise, that is a question of defense, and is properly brought out by the respondents' direct examination, but I respectfully submit it has no place in cross-examination.

Mr. Albert: If it please the Court—

Examiner Bennett: Well, I have heard all the debate I care to hear on that. I am going to let you pursue the examination to a certain extent.

Mr. Albert: Thank you, your Honor.

Examiner Bennett: Objection is overruled.

5690

(Question read as follows: "Q. Have you any knowledge as to how many manufacturers there are that manufacture merchandise in the same price line as the members of the Fashion Originators Guild?")

A. I have never counted them, no.

Q. After the red carding, did you make any investigation to determine from what manufacturers you could obtain the same price line as had been handled by you through members of the Fashion Originators Guild? A. Yes, we did.

Q. And, as a result of that investigation, what did you find? A. We found that in some cases we could replace, and in other cases we could not.

5691

Q. Well, as a result of your investigation, how many manufacturers did you find who were manufacturing merchandise in the same price line as the Fashion Originators Guild of America members did?

Mr. Martin: Objected to; the witness has already testified he does not know.

5692

*W. E. Miller—For Commission—Cross.*

Examiner Bennett: Yes, that is your testimony, that you do not know?

The Witness: I don't know how many there were.

Examiner Bennett: I see. All right.

*By Mr. Albert.*

Q. Were you furnished with any list by any of your sources of information listing manufacturers manufacturing merchandise in the same price line as the members of the Fashion Originators Guild of America?

5693

Mr. Martin: Objected to.

Examiner Bennett: Overruled; he may answer.

A. You mean the A.M.C.?

*By Mr. Albert.*

Q. That is right. A. We have a list.

Q. So that you did have a list of manufacturers, did you not? A. Yes, we had a list.

Q. You did not testify to that, or that information, in response to any of my previous questions; did you? A. It was not asked, to my knowledge.

Mr. Albert: May I have Commission's Exhibit 450?

5694

(Counsel searches for exhibit.)

Mr. Albert: May I ask the Court's indulgence for just a moment?

Examiner Bennett: I beg your pardon?

Mr. Albert: May I ask the Court's indulgence for just a moment; they went for that exhibit.

Examiner Bennett: Yes.

Mr. Post: A copy of it would be attached to the last day's testimony taken in Philadelphia.

Mr. Keller: Here it is (indicating).



Examiner Bennett: Have you found the exhibit?

Mr. Albert: Yes, your Honor.

Mr. Keller: Not the original; it is just in the testimony.

Examiner Bennett: Yes, I see.

By Mr. Albert.

Q. I show you Commission's Exhibit 450, as typewritten into the record, and ask you if you received a similar letter as this letter?

Mr. Post: Excuse me. Here is the original exhibit.

Mr. Albert: Oh, you found it?

5696

Mr. Post: I found it right here.

(Mr. Albert shows original exhibit to the witness.)

Mr. Martin: This is objected to, your Honor, as seeking to bring in that same old question in connection with the Associated Merchandising Corporation, which you have ruled out.

Mr. Albert: Your Honor, you cannot divorce the serpent from the tree; they have been together since Adam and Eve.

Mr. Martin: There is no evidence to show that this witness or his firm has any connection with the Associated Merchandising Corporation.

Mr. Albert: Why, if your Honor please—

5697

Mr. Martin: And I object to any cross-examination along that line.

Mr. Albert: If your Honor please, this witness has volunteered the information that the A.M.C. sent him a list of sources of supply.

Mr. Martin: In other words, do you think you can cross-examine him on cross-examination?

Mr. Albert: I can get out of him any information that is pertaining to his direct. He said his

5698

*W. E. Miller—For Commission—Cross.*

sources of supply were affected, and that is what I want. It is the only purpose of this examination.

Examiner Bennett: I understand that the witness testified that he had a list of this sort. That is, that he had a list setting forth certain manufacturers. Is that not your testimony?

The Witness: That is correct.

Mr. Albert: That is, he referred to a list generally without—

Examiner Bennett: Yes, I will sustain the objection to that question. He has a list, and that is all there is to it.

5699

*By Mr. Albert.*

Q. Well, now, I show you a list of non-Guild members, being Commission's Exhibit 450-B to 450-P, and ask you if this is the list that you had?

Mr. Martino Objected to.

Examiner Bennett: I will let him answer that.

A. I believe that that is true. May I go through it? (Witness examines Exhibit 450.)

*By Mr. Albert.*

Q. Is that an accurate list? A. As far as—

5700

Mr. Martin: I object to that. Obviously the witness cannot testify as to that. He did not prepare the list; it was a list that was sent him.

Mr. Albert: He testified he had actually received a lot of things that he has not prepared, your Honor.

Mr. Martin: He has not testified as to the accuracy of that, though.

Examiner Bennett: Sustained; I will sustain the objection.

Mr. Albert: Exception.

By Mr. Albert.

Q. Was this list provided you in the ordinary course of business of William Taylor Son & Company?

Mr. Martin: Objected to.

Examiner Bennett: Sustained.

Mr. Albert: Now, if your Honor please—

Examiner Bennett: Well, I do not think—I think you are asking him impossible questions; he evidently cannot—

Mr. Albert: That is what I am trying to find out. That is precisely what I am trying to find out.

Examiner Bennett: Well, find out whether this, that or the other concern was providing him with the information as to what he wanted. Let us get at it. Let us get at the thing:

5702

By Mr. Albert.

Q. Did you purchase any goods from Simon & Schmer?

A. Not to my knowledge.

Q. Did you purchase any goods from Rosenthal-Kalman? A. May I ask a question?

Q. Yes. A. That is the same as Rosana?

Mr. Feldman: Yes, that is right.

The Witness: Yes.

By Mr. Albert.

Q. You did? A. Yes.

5703

Mr. Martin: Your Honor please, I would like at this time—it is immaterial, of course, to the Commission whether or not these names are put in evidence, but I would like to—

Examiner Bennett: Make your objection.

Mr. Martin: —enter an objection and ask the Court to call to the attention of the witness that he

5704

*W. E. Miller—For Commission—Cross.*

is—if he does not want to disclose his present source of supply he does not have to, that is up to him.

Examiner Bennett: Well, I thought I made—

Mr. Albert: Now, then—

Examiner Bennett: I thought I had made that plain to him.

Mr. Albert: Now, if it please the Court—I mean, do you not think that this solicitation of the Federal Trade Commission—

Examiner Bennett: May I say—

Mr. Albert: —making certain that the witness is informed that he does not have to testify is unseemly?

5705

Examiner Bennett: Please do not debate that. There is no need of debating that and filling the record with that sort of thing.

Mr. Albert: Very well.

Examiner Bennett: The witness has not indicated that he is reluctant to disclose it, and that is up to him. Go ahead and question him. If he wants to answer, why, he may do so; if he does not, if he thinks that is confidential matter, he need not disclose it. It is up to him to say.

*By Mr. Albert.*

5706

Q. Now, Mr. Miller, did you contact Rosenfield-Newman for the purpose of purchasing merchandise?

Mr. Martin: Objected to.

Examiner Bennett: Overruled.

A. Not to my knowledge.

Q. Did you contact Patricia for the purpose of purchasing merchandise? A. Yes.

Q. Did you purchase any? A. I believe so; I am not sure.

Q. Do you know the amount of that purchase? A. I do not know, offhand.

Q. Will you furnish me with the figures? A. I am afraid I cannot do that.

Q. You mean you won't do that? A. I could not without permission of my concern.

Q. Will you find out if they will permit you to disclose those figures? A. I will ask them, to.

Q. What about Virginia Lee? A. I don't recall that.

Q. You don't recall that at all? A. I don't recall whether we made any—I know the name is on the list, that is all.

Q. And Bacher & Schachter, did you contact them? A. Not to my knowledge.

5708

Q. Did you contact Varsity? A. Yes.

Q. Did you purchase any goods from Varsity? A. I don't know.

Q. Did you contact Ruth Lane? A. Not to my knowledge.

Q. Did you contact D. Saltman? A. Not to my knowledge.

Q. Did you contact Baronet? A. Yes.

Q. Did you make any purchases from them? A. Yes.

Q. How much merchandise did you purchase from them? A. I don't know.

Q. Are the figures available? A. They are.

Q. Will you provide me with them? A. No.

Q. That is, you do not have to ask your superiors with respect to them, do you? A. If you would rather have the other answer no, we will make it no all the way down.

5709

Q. That is, I understand with respect to all houses on this list that you actually purchased goods from, you refuse to provide me with the figures or the amount of the purchase? A. That is right.

Q. Is that correct? A. That is correct.

5710

*W. E. Miller—For Commission—Cross.*

Q. Very well, I won't have to ask that question on all of them. A. That is correct.

Q. Did you contact D. Saltzman? A. I beg your pardon?.

Q. (Question read.) A. I don't know; not to my knowledge.

Q. Did you contact Baronet? A. I believe I answered that.

Q. Did you contact Rolfe? A. I did not personally contact any of these manufacturers.

Q. I certainly am not referring to you personally. A. Well, I want that clear.

5711 Q. I am referring to you, your buyers, or your business. A. I simply want to make that clear that I did not do it personally; that's it.

Q. I mean, you are not qualifying your answer with respect to all of the houses I have asked you about? A. No, I am simply explaining, simply explaining.

Q. So that your answers with respect to the various houses are correct answers? A. So far as I know, yes.

Q. You are the divisional merchandise manager, are you not? A. Yes.

Q. And know what your buyers are doing, do you not? A. Yes.

Q. And they act under instructions from you, do they not? A. Yes.

5712 Q. Did you contact Esterles? A. Yes.

Q. Did you make any purchases from them? A. Yes.

Q. Did you contact Adair? A. I am not sure.

Q. Did you contact Hurwitz? A. I am not sure.

Q. Did you contact Samuels? A. I am not sure.

Q. Melgro? A. I don't know.

Q. Abrams & Norman? A. I don't know.

Q. Casanova? A. I believe so, but I am not sure.

Q. Abrams & Norman?



Mr. Martin: Now, your Honor, please, I object to any further continuation of this. Here is a list of fifteen pages typewritten names of manufacturers. I object to the time of the Court being taken up by Mr. Albert going through and naming each manufacturer, asking this witness whether he was contacted or not. The witness has testified that he did have a list of non-Guild manufacturers which were an open source of supply to him for the purchase of goods, and that his purchases were made therefrom.

Now, I object to any delay on the part of counsel here. I can see no purpose that it can serve by checking up each individual name on fifteen pages: "Did you know this man?" "Did you buy from this man?" I object to a continuation on the grounds it is irrelevant and immaterial. 5714

Mr. Albert: If your Honor please, it is really unfortunate that the list is so long and that he has so many sources of supply that he can contact, but that is not my fault. I have to investigate in order to determine exactly what sources of supply he has attempted to tap. Now, if the witness will tell me, or if Mr. Martin will stipulate that they only attempted to contact about twenty-five houses that were not Guild members, and didn't attempt in any way to contact any of the others, I will take the stipulation. I will save time. 5715

Mr. Martin: I won't stipulate anything because I cannot stipulate that.

Examiner Bennett: Why don't you ask that question?

By Mr. Albert.

Q. Mr. Miller, about how many houses would you say William Taylor Son & Company contacted who were not

5716

*W. E. Miller—For Commission—Cross.*

members of the Guild for the purpose of obtaining merchandise after the red carding? A. I don't know, Mr. Albert.

Q. You don't know.

Mr. Albert: Well, now, there you are, your Honor.

Examiner Bennett: Well, the list is in the record.

Mr. Albert: Not as to what he did, your Honor.

Examiner Bennett: Which indicates that there were those sources of supply. The witness has said he had that list, and there are sources of supply, which proves he had sources of supply. He says they were not adequate. Now, there you are, and I don't see that you are adding anything whatever to the record by taking all of this time to ask about each one individually. I have permitted you to go through and get samples.

5717

*By Mr. Albert.*

Q. Can you form any estimate, Mr. Miller, of the amount of houses you contacted? Would you say it was fifty? A. I wouldn't know, Mr. Albert.

Q. Would you say it was 100? A. I wouldn't know.

Q. Would you say it was ten?

5718

Mr. Martin: The witness has already testified, your Honor, that he doesn't know.

Mr. Albert: I think I can prove a little deeper, your Honor, to find out what his knowledge is, or, at least, to test his credibility, to find his knowledge of his own business.

Mr. Martin: He has told you.

Mr. Albert: In the face of the fact they had no sources of supply, he now says that he doesn't even know whom he contacted.

Mr. Martin: He said that he—

Examiner Bennett: That is not quite the fact. You are asking him about the numbers he contacted. He doesn't know the number.

By Mr. Albert.

Q. You have no idea of how many manufacturers you contacted for the purpose of supplying yourself with the same price line of goods as was furnished by the Fashion Originators Guild?

Mr. Martin: Objected to as already having been answered.

Examiner Bennett: I will overrule the objection. You may answer.

5720

A. I haven't counted them, no.

By Mr. Albert.

Q. Now, Mr. Miller, have you brought in the records of the notices of cancellation on the outstanding orders at the time of the red carding pursuant to Commission's Exhibit 472, I think it is? A. I found upon investigation, Mr. Albert, that those records were not complete, that we only carried them back three months, that they have been discarded.

Q. And that is— A. I am sorry. That is a fact.

Q. That is, they have been destroyed? A. That is right.

5721

Q. You left them in a corner somewhere, and they disappeared? A. No. No. I beg your pardon. They are actually not available.

Q. They are actually—I assume that if you tell me they are not available that they aren't but where were they when you last saw them?

5722

*W. E. Miller—For Commission—Cross.*

Mr. Martin: Now, if your Honor please, I object to this line of questioning. The witness has testified that their records of that character were only kept for three months.

Mr. Albert: Now, if your Honor please—

Mr. Martin: And that those records are available, and that prior to that time he did not keep the records.

5723

Mr. Albert: If it please the Court, this witness very deliberately testified yesterday that the records showing the cancellation of these orders which he says he didn't have to date were available and that he would bring them in, and then we come in this morning and for the first time in all of the fantastic things that have occurred on these hearings with respect to evidence, we now find that evidence is missing or has been destroyed, or cannot be located, that it was affirmatively testified to yesterday was absolutely available to the Commission. Now, I ask in the light of that fact that Commission's Exhibit 472 be stricken from the evidence upon the ground that your Honor has somewhat restrained cross-examination with respect thereto upon the grounds that we could bring in William Taylor Company upon our direct examination, subpoena their records, if possible, and demonstrate the inaccuracy of them.

5724

Examiner Bennett: You can't subpoena records that are not in existence.

Mr. Albert: Exactly, your Honor, and therefore I am foreclosed from in any way disputing this sheet of paper upon which we have now no record whatsoever to substantiate.

Examiner Bennett: Motion denied.

Mr. Albert: Exception.

By Mr. Albert.

Q. That in so far as the records of William Taylor Company now go, you have no knowledge whatsoever as to whether or not the orders which were outstanding at the time of the red carding were canceled either by your internal cancellation system or by the direct cancellation system? A. I have no records to substantiate that.

Q. And, of course, there are no duplicates around anywheres? A. Not complete files, no.

Q. Now, haven't you any letter file with respect to these orders? A. No.

Q. Haven't you any duplicate letter of an original which might have been sent to the manufacturer informing him of the fact the order had been canceled? A. We don't handle it that way. We don't write letters.

5726

Q. You don't write any letters at all? A. No.

Q. You don't give any manufacturer any notice of the fact that in so far as you were concerned the order has been canceled? A. Oh, yes. We do. It is a form. It is a regular form that is made out. It is not a letter.

Q. Well, whatever that may be termed, a letter or a form or anything else, you have no duplicate of those? A. No, not complete files, no.

Q. How about your internal cancellation system? A. That is it. That is the——

Q. That is, as far as these particular files are concerned, you have destroyed your records, or your records are missing, or they have been misplaced, or they are on top of a file cabinet and cannot be found, or they were dropped in water and they are not available? A. They are not available.

5727

Q. So that, Mr. Miller, since you have no record of the cancellation of these particular orders, and since you have sent out no record on your internal cancellations, there is, therefore, no written memorandum demonstrating the fact

5728

W. E. Miller—For Commission—Cross.

that these orders have been cancelled; isn't that so? A. Well, there is nothing available to indicate at the present time, if that is what you mean.

Q. Well, you don't expect these records to suddenly appear in the future, do you? A. No.

Q. I mean, I hope you don't. A. No.

Q. And they are not going to appear, are they? A. As far as I know, they will not.

Q. What do you mean by "as far as you know"? Aren't they gone? A. So far as I know, they are gone.

Q. Did you make a strict search for them? A. I requested the records from the department sources and was told that they were not available.

5729

Q. What do you mean by "they were not available"? A. I mean they weren't in existence, so far as I know.

Q. Then they are not in existence in so far as your store is concerned? A. So far as I know, that is true.

Q. Why do you qualify it by "so far as you know"? Don't you vouch for the accuracy of the statements of your subordinates? A. Simply because I wasn't present when they were destroyed. I don't know what happened to them.

Q. I see. Were you present when these records, Commission's Exhibits 471, 472 and 473 were made up? A. I don't know what they are. I am sorry.

5730

Q. I mean, those are the famous ones that we have been discussing now for two days, and which you testified were very accurate, and which you had to correct. You weren't present when those were made up, either, were you? A. Yes, I was.

Q. Oh, you were present when they were made up? A. The one I was present. I made it up myself.

Q. Yes. 470. How about the others? A. The others were made up under my supervision.

Q. Supervision in the sense that you instructed them to get up the figures; isn't that true? A. That is correct.



Q. You didn't actually see them take the figures off, did you? A. No.

Q. You don't know anything more about the accuracy of those figures than you know about the accuracy of the fact that records are missing, do you? A. Except that they are records that are obtained in the ordinary course of business and are used by our firm for the transaction of the business.

Q. Isn't the information that was given to you to the effect that the records are missing information that has been compiled in the regular course of your business? A. Yes.

Q. Why won't you vouch for the accuracy of that statement by your subordinates? A. Simply because I don't know. I was simply told that they were not available and that they had not—they don't keep records beyond three months. 5732

Q. Well, you weren't told anything more about the accuracy of Commission's Exhibits 471, 472 and 473, were you, except the fact that your subordinates handed them to you as work which they had done in the ordinary course of their business pursuant to instructions from you; isn't that so? A. That is true.

Q. Why do you vouch for the accuracy of Commission's Exhibits 471, 472 and 473? Is it because you think it helps your case? A. No.

Q. Well, now, I hope that the records are not going to be available in the future, Mr. Miller. A. They will not be available. Don't worry about that. 5733

Q. I merely say that by reason of the fact that you seemingly—your statement, as to the accuracy of the subordinates upon whom you rely in some cases and refuse to rely in others. A. No, I don't mean anything like that.

Q. Have you brought in with you the records showing the delivery dates of the outstanding orders of the date of

the red carding, or the delivery dates of the orders which you say were outstanding on the date of the red carding?

A. No, I have not.

Q. Are those also not available? A. No; those orders are available.

Q. Did you attempt to get them last night? A. I didn't know I was expected to.

Q. Am I mistaken in believing that you volunteered to bring them in? A. You are.

Q. Well, I am sorry. Will you make those records available to me this afternoon or to-morrow morning? A. No.

Q. That isn't something that is going to affect your business very much, is it? A. Well, I simply do not choose to make them available.

Q. In other words, you don't want us to see when those delivery dates actually fell due; is that right?

Mr. Martin: Objected to, your Honor—the witness—he has asked for them and the witness has said that he would not produce them. Now, his reasons I don't think he is obliged to disclose.

Mr. Albert: Now, if it pleases the Court, up to the present time every time that a witness refused to disclose information it was with respect to what might possibly be deemed to be confidential figures that might be of use to his competitors, and there might be some basis for the Court saying, "Well, you subpoena him and get him to bring it in that way. We won't make him do it." I am not saying there is. I am saying there is something of an argument with respect to it. Now, I disagree with the argument. Now, we have a witness coming in and giving a long line of testimony to the effect that certain orders were canceled by reason of the fact that delivery dates had expired. Those orders are dead. They are past transactions. The people with whom they were had in the record. There is

absolutely nothing harmful in the fact that Taylor & Company should come in and disclose those dates except if those dates, when disclosed, show that Taylor is not telling the truth when they come in here and say that they canceled their orders because the delivery dates expired. That is the only reason why those dates can be, or should be, willing to be canceled by the witness, and I ask your Honor to direct this man to bring in those figures, or on condition that all of his testimony to the effect that they canceled the orders by reason of the fact that the delivery dates expired, be expunged and stricken from the record. This is merely a contumacious and I believe a contentious refusal on the part of the witness to supply information. I don't mean that in an evil sense, I mean it in the legal sense.

5738

Examiner Bennett: Denied.

Mr. Albert: I am sorry, your Honor. I didn't get your ruling.

Examiner Bennett: I beg your pardon?

Mr. Albert: I did not get your Honor's ruling.

Examiner Bennett: I said, "Denied."

Mr. Albert: Exception. And I now offer to prove that if the witness had answered the question he would have answered that the records were available, and that if those records were produced they would have disclosed that the delivery—

5739

Examiner Bennett: That is enough of this offer of proof.

Mr. Albert: I am sorry: I couldn't hear you on account of the noise.

Examiner Bennett: You don't know what are in those records, not the least bit.

Mr. Albert: I believe, if it pleases the Court, I should offer my proof—

5740

*W. E. Miller—For Commission—Cross.*

Examiner Bennett: Yes.

Mr. Albert: To show the relevancy of it.

Examiner Bennett: Under the guise of an offer to prove you are making a charge that is wholly without foundation so far as anybody knows.

Mr. Albert: But equally, your Honor, not <sup>an</sup> true, so far as anybody knows.

Examiner Bennett: You have made it already. I am simply warning you. Go ahead and make your offer of proof, if you want to encumber the record with that sort of stuff.

5741

Mr. Albert: If your Honor pleases, I respectfully believe that in order to show the relevancy of my line of questioning, and the necessity for getting answers from the witness, that I should know and show what I hope to prove by the questions. That is all I want to do.

Examiner Bennett: All right.

Mr. Albert: Of course I don't say that that is true. I mean, it is open to an inference either way. I want to show the inference that can be drawn.

Examiner Bennett: Offers of proof are offers to prove. They are not conjectures.

Mr. Albert: I must respectfully differ, if it pleases the Court.

5742

Examiner Bennett: You can go ahead and make your offer of proof, if you want to. Make it, if you want to. Make it in that form.

Mr. Albert: Yes. Thank you.

Examiner Bennett: Make it in any form you want to.

Mr. Albert: I offer to prove that if the witness had been permitted to answer, that the records were available, he would have answered that they were available. And I offer to prove that had the—

Examiner Bennett: He was permitted to answer and did answer that they were available.

Mr. Albert: Then, had the witness been required to bring the records in, the records would have disclosed that the delivery dates on the orders which were outstanding pursuant to Commission's Exhibit 472 had not expired at the time of the cancellation, upon which basis I would have been further able to prove that William Taylor & Company had arbitrarily wished to discriminate in the orders which it sought to have filled, and that its inability to obtain the fulfillment of the orders mentioned in Commission's Exhibit 472 arose from the fact that it desired certain of those orders, and not the entire list thereof; and that the refusal of the manufacturers to supply William Taylor & Company with the merchandise was due to its own willful acts.

5744

Mr. Martin: I move that the offer of proof be stricken from the record.

Examiner Bennett: It may be stricken.

Mr. Albert: Exception.

*By Mr. Albert.*

Q. Now, Mr. Miller, what percentage of Guild merchandise is sold in Department 330? A. I haven't the records by departments.

Q. Beg your pardon? A. I haven't the records by departments with me.

5745

Q. Are they available? A. They are.

Q. Will you provide me with them? A. No.

Q. What percentage of Guild merchandise is sold in Department 335? A. I haven't the records with me.

Q. Are they available, or have they been destroyed, or are they missing? A. They are available.

Q. Will you provide me with them? A. No.

5746

*W. E. Miller—For Commission—Cross.*

Q. What percentage of Guild merchandise is sold in Department 350? A. I don't know.

Q. Beg your pardon? A. I haven't the records with me. I don't know.

Q. Are they available? A. They are.

Q. Will you make them available to me? A. No.

Q. Will you supply the Commission and the Court with the information with respect thereto? A. If it is requested.

Q. Well, I am requesting it. A. No.

Q. If the Commission requested it, you will supply it?  
A. That is right.

5747

Mr. Albert: Well, in the interests, if it pleases the Court, of a full and complete disclosure of the evidence upon which Commission's Exhibit 473 is predicated, in the interest of saving the time of all concerned, certainly in the interest of a complete record with respect thereto, I ask that you ask the Commission to ask Mr. Miller to bring these records in which are now available in Cleveland.

Mr. Martin: If your Honor pleases, I would like to renew my statement that the Commission's counsel reserves unto itself the right to handle this case as it sees fit, not as counsel for the respondent sees fit.

5748

Mr. Albert: I didn't ask that, if it pleases the Court. I didn't ask Mr. Martin to make the request. I very respectfully and most humbly ask your Honor to request of the Commission that he bring it in.

Examiner Bennett: Denied.

Mr. Albert: Exception.

*By Mr. Albert.*

Q. Can you tell me the percentage of Guild merchandise sold in Department 360? A. Not now, no.



Q. What do you mean by "not now"? A. I haven't the records available.

Q. Do you know what percentage is sold? A. I did.

Q. When did you last see the records? A. I don't recall.

Q. You haven't any knowledge of when you last saw it? A. No.

Q. Well, didn't you see it when you prepared Commission's Exhibit 473? A. No.

Mr. Martin: Objected to as being irrelevant and immaterial.

Mr. Albert: Goes to the credibility of this witness, your Honor, who says he doesn't know those figures at the present time.

5750

Mr. Martin: He testified that he didn't have them with him.

Examiner Bennett: Go ahead. You may answer.

The Witness: May I have the question?

A. (Question read.) A. As far as I know it, it has no relation to 473.

Examiner Bennett: We will take a recess of ten minutes.

(There was a short recess taken.)

Examiner Bennett: Be in order, please. You may proceed, Mr. Albert.

(Question and answer read.)

5751

By Mr. Albert.

Q. Will you explain that statement, Mr. Miller? Well, merely that the Exhibit 473—Commission's Exhibit 473—is a record of percentage of increase and decrease of sales for the period February through June in 1936 over 1935, and has no relation to the merchandise contained in those departments.

5752

*W. E. Miller—For Commission—Cross.*

Q. In other words, in preparing Commission's Exhibit 473, no computation was made of the amount of Guild merchandise that was involved in the sales of merchandise in these departments; is that what you mean? A. That is correct.

Q. Now, Mr. Miller, do you mean that with respect to Departments 350, 371 and 380, no computation was made of the Guild merchandise that was being sold in those departments?

Mr. Martin: Objected to. The witness has answered fully what the exhibit is.

Examiner Bennett: Sustained.

5753

*By Mr. Albert.*

Q. Well, now, with respect to Department 330, in preparing these figures on Commission's Exhibit 473 for February, was any computation made of the amount of Guild merchandise being sold in that department during the period covered?

Mr. Martin: Same objection.

Examiner Bennett: Sustained.

Mr. Albert: Now, if it please the Court—

Examiner Bennett: You seem to be arguing on the matter that you are trying to justify as to some sort of a fluke which you made in one of your questions, and I do not think we are interested in that.

5754

Mr. Albert: No, no, it is not directed to that, your Honor—

Examiner Bennett: If you want—there is an estimate of Guild merchandise, if you want to go into that, I think you have been into it, though, very thoroughly—

Mr. Albert: But may I point this out, your Honor? In so far as these particular departments

are concerned for the various months in question, unless there was Guild merchandise sold in those departments in that particular month, the figures have no relevancy whatsoever in this proceeding. For instance, if there was no Guild merchandise whatsoever of that 60 per cent. in the Department 330 in February of 1935 or 1936, then that particular figure has absolutely no materiality or probative force, and should not be contained in Commission's Exhibit 473. That is what my question is predicated upon, your Honor. It is quite true—

Mr. Martin: Your Honor, it may be—

Mr. Albert: It is quite true—it is quite true that the witness has testified that 60 per cent. of his merchandise in the early styles line is purchased from Guild manufacturers, but the question is in what particular departments were they sold. The entire 60 per cent. of the merchandise may have been sold in one department in one month. We do not know. That is what I am trying to find out, your Honor. I believe in the light of the explanation I have made your Honor should permit me to examine further.

5756

Examiner Bennett: I have ruled.

Mr. Albert: Exception.

By Mr. Albert.

Q. Do you know how much Guild merchandise was sold in Department 330 in March, 1935, or March of 1936?

5757

Mr. Martin: Objected to; that was gone into fully.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

5758

*W. E. Miller—For Commission—Cross.**By Mr. Albert.*

Q. Can you tell me, or will you tell me what percentage of your total percentage of Guild merchandise was sold in any of the departments during the period set forth in Commission's Exhibit 473?

Mr. Martin: Same objection. That has been covered thoroughly on cross-examination already.

5759

Mr. Albert: I am seeking to elicit the basis, and what the meaning is of the figures in Commission's Exhibit 473, your Honor. For instance, in March, with respect to Department 350, there was an increase over 1935 of .47. Now, for all we know, where there was such a slight difference in the figures, there may have been no merchandise, of Guild merchandise, sold in that department during that month. It may have been all Guild merchandise. I am trying to get some basis of understanding of Commission's Exhibit 473 for the edification of the Court.

Examiner Bennett: All right. Sustained.

Mr. Albert: Exception.

*By Mr. Albert.*

Q. Mr. Miller, are you acquainted with Ashley Frocks, Inc.?

5760

Mr. Martin: Objected to as being irrelevant, immaterial, not within the scope of proper cross-examination.

Mr. Albert: Not considered immaterial and irrelevant by Mr. Martin, your Honor, until he knows what I am asking the question for. I am just asking him if he knows that firm, laying the foundation, very obviously, your Honor.

Examiner Bennett: Well, I will let you develop it and see whether you have anything. He may answer.

A. I know of it.

By Mr. Albert.

Q. Do you also know that they were formerly—that they were formerly members of the Guild?

Mr. Martin: Objected to.

A. I don't remember that.

Q. Have you attempted to purchase any merchandise from Ashley Frocks, Inc.?

5762

Mr. Martin: Objected to.

Examiner Bennett: I will let him answer.

A. I don't know.

By Mr. Albert.

Q. By that you mean that you may have, but you do not know, or you mean that you have not any idea about it at all? A. I mean that I don't know. I don't know whether we have or we have not.

Q. Well, isn't it your duty as merchandise manager, especially in the light of the fact that you say your sources of supply were diminished, to adequately determine whether adequate sources of supply have been contacted by your buyers? A. Yes, but I don't issue instructions on each individual source.

5763

Mr. Martin: Now, if your Honor pleases, the question which was just asked indicates that what Mr. Albert is leading up to is the question of source of supply, which I think he has pretty fully cov-

5764

*W. E. Miller—For Commission—Cross.*

ered this morning by that list, and which I understood by your Honor's ruling there would be no more examination along that line.

Examiner Bennett: Yes—

Mr. Albert: Entirely different.

Examiner Bennett: If you will disclose what you—

Mr. Albert: Yes, your Honor, I wish to do that now.

Examiner Bennett: What you intend to show by this line of questions, why—

Mr. Albert: Yes, your Honor, I want to do that now.

5765

Examiner Bennett: It will help the Examiner.

Mr. Albert: The previous testimony with respect to sources of supply was directed for the most part at showing the great number of sources of supply of manufacturers in the same price line as Guild manufacturers.

Examiner Bennett: Yes.

Mr. Albert: The present line of inquiry is directed at showing that manufacturers who were formerly members of the Guild are now open as sources of supply to Taylor & Company, and, ostensibly of the same quality of merchandise as has previously been purchased by him, and some of them were houses whom he formerly purchased from, and whom he cannot purchase from as no longer being members of the Guild. So far as number and so far as ostensible quality is concerned, in so far as Mr. Martin has it, his sources of supply have not been diminished in any amount.

5766

Examiner Bennett: Well, I will permit you to develop that.

Mr. Albert: Thank you.



By Mr. Albert.

Q. Are you familiar with the firm of Isidore Ash, Inc.?

A. No.

Q. Do not know them at all? A. No.

Q. Do you know that they were members of the Guild?

A. I am not familiar with that fact.

Q. Do you know the firm of Baron Dress Company? A.

Yes.

Q. Are they members of the Guild? A. They are not.

Q. I mean, were they members of the Guild? A. Yes.

Q. Have you attempted to purchase dresses from them since the red carding? A. We have purchased dresses from them.

5768

Q. You have purchased dresses from them? A. Yes.

Q. Will you make available to me the amount of merchandise you purchased from them? A. No.

Q. Do you know the firm of Baum, Kravat & Baum?

A. Baum, Kravat & Baum?

Q. Baum, Kravat & Baum. A. Yes.

Q. Do you know that they were formerly members of the Guild? A. I am not familiar with that fact.

Q. Will you accept my statement that they were formerly members of the Guild? A. If you say it is true, I guess it is.

Q. Yes, they were. Did you attempt to purchase any merchandise from them since the red carding? A. I am not sure of that.

5769

Q. Will you accept my statement that they are no longer members of the Guild? A. Yes.

Q. Are you familiar with the firm of Cohn, Kahn, Inc.?

A. I know of them, yes.

Q. Do you know of them as a member of the Fashion Originators Guild previous to the date of the red carding?

A. I haven't that list, and so I don't know. They are not a house we did business prior to—

5770

*W. E. Miller—For Commission—Cross.*

Q. Will you accept my statement that they were formerly members of the Guild when I tell you that they were? A. If it is on the list it is O.K.

Q. Have you attempted to purchase any merchandise from them? A. I believe so, but I am not positive of that.

Q. Are you familiar with Jack Edison, Inc.? A. How is that last name spelled?

Q. Edison, E-d-i-s-o-n. A. No.

Q. Will you accept my statement that they were members of the Guild and that they no longer are? A. If you say so.

Q. Yes. A. It is all right with me.

5771

Examiner Bennett: Are you testifying?

Mr. Albert: I am asking him if he will accept my statement, your Honor, for the purpose of further questioning.

Examiner Bennett: I know, but if it is just for the purpose of further questioning, or do you expect to establish that fact in the record?

Mr. Albert: Well, it is for the purpose of further questioning; it is for the purpose of saving time. I do not think it is anything that the Commission will seriously dispute, your Honor.

Examiner Bennett: Yes, but we prefer to have testimony as developed by questions.

5772

*By Mr. Albert.*

Q. Did you attempt to purchase any merchandise from Jack Edison, Inc.? A. I don't know that.

Q. Are you familiar with F. L. Gustave & Company, Inc.? A. I know of the firm.

Q. Did you know of them as members of the Guild? A. I don't recall it.

Q. Have you previously at any time during the time prior to the red carding purchased merchandise from them? A. I don't know.

Q. Have you attempted to purchase merchandise from them since the red carding? A. I don't know that.

Q. Who in William Taylor Son & Company would definitely know as to whether or not these various manufacturing concerns, which I have just mentioned had been approached for the purpose of purchasing merchandise on behalf of William Taylor Son & Company? A. Unless they are accounts we do a sizeable business with, only the buyers would know.

Q. Only the buyers? A. Unless they are accounts we use regularly and do business with.

Q. So, up to the present time, in so far as the manufacturing firms I have just inquired about are concerned, you have not placed any sizeable orders with them otherwise you would know? A. I have indicated in some cases that I did know.

5774

Q. Well, I mean aside from those that you have stated you did purchase merchandise from, those that you stated that you did not know whether or not you had purchased merchandise from, if you have purchased merchandise from them, it has not been in any sizeable amount otherwise you would know it? A. I don't have sufficient evidence—I don't have sufficient grounds on which to base an answer, otherwise no.

Q. Well, you have just stated unless an order is of a sizeable amount—strike that. A. Will you repeat them?

Q. You have just stated if an order was of a sizeable amount you would know it. A. I did not say—

5775

Mr. Martin: He did not testify that, your Honor. He testified he would not know it unless it was an account with which they were regularly accustomed to do business.

Examiner Bennett: Yes, I think that was the statement.

5776

*W. E. Miller—For Commission—Cross.**By Mr. Albert.*

Q. Are you familiar with the firm of Joseph Greenbach & Katina, Inc.? A. Yes.

Q. Do you know of them as a former member of the Guild? A. Yes.

Q. Did you do business with them while they were members of the Guild? A. Yes.

Q. Have you purchased any merchandise from them since the red carding? A. Not to my knowledge.

Q. Do you mean by that "No"? A. I don't know.

Q. Well, they were a former account of yours, were they not? A. Yes.

5777 Q. Were they a substantial account formerly? A. Not large, no.

Q. So that you do not know whether or not one of your old accounts is still selling you merchandise?—

Mr. Martin: I submit he has answered the question. Your Honor—

Examiner Bennett: There is nothing before the Examiner. That question is uncompleted, I believe.

(Question read.)

*By Mr. Albert.*

Q. —do' you?

5778 Mr. Martin: I object.

Examiner Bennett: I will sustain the objection.

*By Mr. Albert.*

Q. Are you familiar with the firm of Grossward Company, Inc.? A. I know of them.

Q. Do you know of them as a former member of the Guild? A. I am not familiar with that firm.

Mr. Martin: Now, if your Honor pleases—

Mr. Albert: Have you—

Mr. Martin: Just a second, Mr. Albert. I would like to renew my objection as previously made, that it has been developed that they are manufacturers, they are sources of supply, and I see no reason to go into this question any further.

Mr. Albert: If it pleases the Court, I think this goes directly to his testimony on sources of supply.

Examiner Bennett: Yes, you have a very fair sample of it, I think, unless the Guild has been pretty well stripped of its members.

Mr. Albert: I did not quite follow that.

5780

Examiner Bennett: I say, you have a pretty good sample of it, unless the Guild has been pretty well stripped of its members, and I will sustain an objection to that.

Mr. Albert: Your Honor, I want to show that this witness has been stripped of his memory rather than that the Guild has.

Mr. Martin: I did not say "memory"; he said "members."

The Witness: Members.

Mr. Albert: Oh, members. I am sorry. Will your Honor grant me an indulgence for just a moment? I want to make a computation here.

Examiner Bennett: Certainly. Certainly, I will indulge you.

5781

Mr. Albert: If it pleases the Court, I now make this offer of proof: That if the witness had been permitted to answer as to whether or not he had made any attempts to purchase merchandise from former members of the Guild—

Examiner Bennett: He has been permitted to answer. Why do you make that statement?

5782

*W. E. Miller—For Commission—Cross.*

Mr. Albert: I believe Mr. Martin has just objected to my continuation with that line of testimony.

Examiner Bennett: Yes, I know, but the Examiner indulged you in that to a very large extent, and he thought you had gone far enough, that you had gone as far as it was of any service to you or anybody else in this matter, and he is not pleased with your making a statement that is not in fact the fact.

Mr. Albert: I am sorry, your Honor, if I misunderstood.

5783

Examiner Bennett: You had better be accurate, then, if you have any statement to make.

Mr. Albert: May I make this offer of proof with the consent with Mr. Martin: That had the witness been questioned with respect to other former members of the Guild as to whether or not he attempted to purchase merchandise from them, his answers as to whether or not he did purchase merchandise from them would have shown the same proportion of those whom he had not purchased from as his present answers to those of whom he has been directly questioned about.

Examiner Bennett: All right.

5784

Mr. Martin: I move that that be stricken from the record. He has been given full and ample opportunity, and the Court indulged him at length, and I move that any purely speculative statement on the part of counsel introduced into the record as an offer of proof as to the facts which cannot possibly be in the respondents'.

Examiner Bennett: I will let it stand.



*By Mr. Albert.*

Q. Mr. Miller, you testified that you knew the Guild shopper, Mrs. Joseph? A. That is correct.

Q. What was customarily her method of doing business in so far as the Guild is concerned with William Taylor & Company? A. Will you qualify that so I can get just exactly what you mean?

Q. What was her method of operation in the William Taylor & Company store when she came in to get information? A. She would go into the departments that she was most likely to be connected—concerned with, usually with sketches of dresses provided her by the head office of the Fashion Originators Guild, and seek to determine in the departments whether or not there were reproductions of those dresses on sale in those departments that were not manufactured or provided by the maker whom her sketch indicated had been the originator of that fashion. 5786

Q. By "reproductions" you mean copies; don't you? A. I assume they are synonymous.

Q. So that you agree with Mr. Gutsché yesterday and disagree with Mr. Martin that there is no synonymity between reproduction and copy; is that correct?

Mr. Martin: I object to that statement. I didn't take part in any examination of Mr. Gutsché.

Mr. Albert: Well, maybe it was Mr. Haycraft.

*By Mr. Albert.*

5787

Q. The first time that Mrs. Joseph appeared in your store she made herself known to you; did she not? A. She did.

Q. And to the buyers? A. I handled that.

Q. That is, you— A. Yes, I saw—

Q. You acquainted the buyers with her? A. —saw that she met Mrs. Joseph. That is right.

Q. And she came in very openly and above-board and said who she was and what her purpose was and what she expected to do and what she would like to do with your permission; isn't that so? A. That is correct.

Q. Whenever she walked into a department in order to examine the stock, would she first see you? A. No.

Q. Or the buyers? A. She didn't always see me before she had gone into the department. The procedure was to allow her access to the departments.

Q. That is, you gave her the complete run of the departments? A. Within reason. I mean, she was very discreet in what she did.

5789 : Q. She was discreet? A. Right.

Q. She wasn't in any way—withdraw that.

Mr. Albert: Will you mark this for identification?

(The document was thereupon marked Respondents' Exhibit No. 33 for Identification.)

*By Mr. Albert.*

Q. I show you Respondents' Exhibit 33 and ask you if that is a letter.—

Examiner Bennett: That is Respondents' Exhibit 33?

Mr. Albert: Quite right, your Honor.

5790

*By Mr. Albert.*

Q. I show you Respondents' Exhibit 33 for Identification and ask you if that is a letter sent by you to the Fashion Originators Guild? A. That is correct.

(Respondents' Exhibit 33 for Identification was handed to Mr. Martin.)

Mr. Martin: No objection.

W. E. Miller—For Commission—Cross.

5791

Mr. Albert: I offer this letter in evidence.

Examiner Bennett: Received.

(The document heretofore marked Respondents' Exhibit No. 33 for Identification was received in evidence.)

Mr. Albert: Have you any objection, Mr. Martin, if we substitute a photostat for the original?

Mr. Martin: No, I have no objection.

Mr. Albert: Thank you. Will you mark this for identification?

(The document was thereupon marked Respondents' Exhibit No. 34 for Identification.)

5792

By Mr. Albert.

Q. I show you Respondents' Exhibit 34 for Identification, Mr. Miller, and ask you if this is a photostat of a declaration of co-operation in anti-piracy signed by William Taylor Company? A. That is right.

(Respondents' Exhibit 34 for Identification was handed to Mr. Martin.)

The Witness: There was a letter to the Company with that.

Mr. Martin: No objection.

Examiner Bennett: Received.

(The document heretofore marked Respondents' Exhibit No. 34 for Identification was received in evidence.)

5793

Examiner Bennett: That is the usual form; is it?

Mr. Martin: Yes.

Mr. Albert: Will you mark this for identification?

(The document was thereupon marked Respondents' Exhibit No. 35 for Identification.)

*By Mr. Albert.*

Q. I show you Respondents' Exhibit 35 for Identification, and ask you if that is a photostat of a letter sent by you to Mr. Goldby, executive secretary of the Fashion Originators? A. As far as I know, that is right. I don't recall of the letter, but it must be right. It has got my signature on it.

(Respondents' Exhibit 35 for Identification was handed to Mr. Martin.)

(There was a discussion off the record between Mr. Martin and Mr. Albert out of the hearing of the Examiner and the Reporter.)

Mr. Albert: Well, is there any objection, Mr. Martin?

Mr. Martin: No, there isn't.

Mr. Albert: To Respondents' Exhibit 35 for Identification?

Mr. Martin: I told you I had no objections.

Mr. Albert: Therefore, I offer it in evidence.

Mr. Martin: But it is not properly identified.

Examiner Bennett: It may be received.

(The document heretofore marked Respondents' Exhibit No. 35 for Identification, was received in evidence.)

Mr. Albert: Will you mark this for identification?

(The document was thereupon marked Respondents' Exhibit No. 36 for Identification.)

By Mr. Albert.

Q. I show you Respondents' Exhibit 36 for Identification, and ask you if this is a photostatic copy of a letter sent to the Fashion Originators Guild on the stationery of William Taylor & Sons Company? A. I don't know. I never saw that letter before.

Q. Is that the stationery of William Taylor & Sons Company? A. That is right.

Q. Do you recognize the signature of Mr. Classel? A. It is Miss Classel.

Q. Miss Classel? A. I don't know her signature. I am sorry.

Q. Would you say that that letter had not been sent from William Taylor Son & Company? A. No, I don't know. I mean, I never saw it. 5798

Q. Do you know whether or not you received a stamp? A. Yes, we received the stamp. We received a stamp. This has reference, however, to the basement store, with which I would not be familiar.

Mr. Albert: Will you mark this for identification?

(The document was thereupon marked Respondents' Exhibit No. 37 for Identification.)

By Mr. Albert.

Q. I show you Respondents' Exhibit 37, being a letter addressed to Albert M. Post, executive secretary, Fashion Originators Guild of America, and ask—rather being a photostat of a letter, and ask if this letter was sent with the authority of William Taylor Son & Company? 5799

Mr. Martin: That is 37, for identification?

Mr. Albert: Yes.

The Witness: May I have the question?

(The question was read.)

5800

*W. E. Miller—For Commission—Cress.*

The Witness: I believe so.

(The letter referred to, Respondents' Exhibit 37 for Identification, was handed to Mr. Martin.)

(The document heretofore marked Respondents' Exhibit No. 37 for Identification, was received in evidence, subject to the original letter being produced.)

Mr. Albert: ~~Will~~ you mark this for identification?

(The document referred to was marked Respondents' Exhibit 38 for Identification.)

5801

*By Mr. Albert.*

Q. I show your Respondents' Exhibit 38 for Identification and ask you if that is a photostatic copy of a telegram sent to the Fashion Originators Guild by William Taylor Son & Company? A. I didn't send the telegram.

Q. Do you know whether or not it was sent? A. I imagine it was.

Q. I mean, you don't— A. I didn't see it.

Q. You don't claim that it wasn't sent? A. No, but I didn't see it.

Q. But as divisional merchandise manager of William Taylor Son & Company, and as the representative of William Taylor Son & Company, do you identify that telegram as a telegram sent by a duly authorized representative of William Taylor Son & Company to the Fashion Originators Guild of America? A. I should say that was true.

5802

Mr. Martin: Let me ask him—

Mr. Albert: I offer that—

Mr. Martin: —one or two questions.



*By Mr. Martin.*

Q. Are you satisfied that that telegram was sent by Taylor's to— A. Yes.

Mr. Martin: Mr. Post, was that telegram received by the Fashion Originators Guild of America as offered in evidence?

Mr. Post: Yes, sir.

Mr. Martin: With that identification, I am willing to admit it, your Honor.

Examiner Bennett: All right.

Mr. Albert: Thank you, Mr. Miller.

Examiner Bennett: It may be received.

5804

(Telegram referred to, heretofore marked for identification Respondents' Exhibit 38, was marked as an exhibit and received in evidence.)

Examiner Bennett: We are up to the time for taking a recess for luncheon.

Mr. Albert: May I be permitted to ask this one question, your Honor?

Examiner Bennett: Will you be through with this witness?

Mr. Albert: Then I will be through—no, I will not be through with them, I will be through as far as the recess is concerned.

Examiner Bennett: All right.

5805

*By Mr. Albert.*

Q. Mr. Miller, do you know whether or not Respondents' Exhibit 38 is in response to a telegram sent by Fashion Originators Guild to William Taylor Son & Company? A. I believe that that is true.

Q. That is, if you received a telegram, Respondents' Exhibit 38 is an answer to that telegram? A. I did not receive the telegram.

5806

*W. E. Miller—For Commission—Cross.*

Q. I mean, William Taylor Son & Company. A. I assume that that is true.

Q. Would you be good enough to produce that telegram to which Respondents' Exhibit 38 is an answer this afternoon? A. Yes, I will try to.

Mr. Albert: Thank you. That is all right.

Mr. Martin: Let me see that.

(Counsel hands paper to Mr. Martin.)

Examiner Bennett: That is all, is it?

Mr. Feldman: Yes.

Examiner Bennett: Before luncheon?

Mr. Albert: Before the recess, your Honor.

5807

Examiner Bennett: All right, we will recess until 2 o'clock.

(Whereupon, at 12.32 o'clock P. M., a recess was taken until 2 o'clock P. M. of the same day.)

#### AFTERNOON SESSION, 2 P. M.

Examiner Bennett: Be in order, please. You may resume.

*By Mr. Albert.*

5808

Q. Have you consulted Mr. Roth with respect to the telegram of which I made a request upon you this morning? A. Yes, I have, and so far we have been unable to locate that. I have left word, however. They are still searching the files. If they get it, they will bring it here. Our files on this matter were scattered all around and two or three people had them. That is the reason it is difficult to—

Q. Well, now, did you at all discuss with them as to whether or not a telegram had been sent to Taylor & Son to which Commission's Exhibit— A. I didn't discuss it with him.

Q. —which Respondents' Exhibit 38 was a reply? A. I was not able to discuss it with him. I was trying to find the telegram through his secretary.

Q. Did you discuss with anybody as to whether or not there was such a telegram? A. No, I didn't discuss it during the noon hour.

Q. Did you ask any of them whether they recalled receiving such a telegram? A. I asked his secretary if she recalled it and she said she should she said, and she would try to find it.

Q. You have no information as to whether or not such a telegram was received by Taylor & Company? A. Not definitely. I know that there was such a telegram but I have no —

5810

Q. Do you also know that the substance of that telegram was a request to Taylor & Company asking whether or not Reilly had authority to speak for them pursuant to Respondents' Exhibit 37? Wasn't that the substance of that telegram? A. I assume that that is true. I would rather not give definite testimony without that telegram available, but I assume that that was true.

Mr. Albert: Will you mark this for identification?

(A document was marked for identification Respondents' Exhibit 39.)

By Mr. Albert.

5811

Q. Who is the Mr. Roth of whom you have been speaking, Mr. Miller? A. He is the manager of the William Taylor Company.

Q. Naturally, you had a great deal of business dealings with him? A. Yes.

Q. You have had correspondence with him, inter-office communications, things of that sort? A. At times, yes.

5812 : *W. E. Miller—For Commission—Cross.*

Q. You are familiar with his signature when you see it, are you not? A. Yes.

Q. Now, I ask you if this is—Respondents' Exhibit 39 for Identification—is a photostatic copy of a letter sent by Mr. Roth on the stationery of William Taylor Son & Company to the Fashion Originators Guild? A. Yes, that is correct.

Q. Did you discuss the contents of the letter with Mr. Roth in any way? A. No more than I believe he asked me what action had been taken with regard to obtaining merchandise from Guild houses, which is indicated in that letter.

5813 Mr. Albert: I offer the letter in evidence.

Mr. Martin: This is a photostatic copy. You are satisfied that such a letter as this was sent by your store?

Mr. Post: I think I have the original here, if you want it?

Mr. Martin: Well, that is all right.

Mr. Post: Is that it?

Mr. Martin: I would rather have him identify the original and then put this in.

Mr. Post: Surely.

The Witness: Yes.

Mr. Martin: No objection.

Examiner Bennett: Received.

5814 (Copy of letter referred to, heretofore marked for identification Respondents' Exhibit 39, was marked as an exhibit and received in evidence.)

*By Mr. Albert.*

Q. Now, in response to Respondents' Exhibit 39, was a letter received from the Fashion Originators Guild? A. I don't know.

Q. Did you see any such letter? A. I don't recall it.

Mr. Albert: Will you mark this for identification?

(Document was marked for identification Respondents' Exhibits 40-A and 40-B.)

By Mr. Albert.

Q. I show you Respondents' Exhibits 40-A and 40-B for Identification and ask you if that is a copy of a letter addressed to Richard G. Roth of William Taylor Son & Company, signed by Albert M. Post as executive director of the Fashion Originators Guild which was sent to Taylor Company? A. What was the question with reference to this?

5816

Q. (Question read.) A. I don't happen to recall this letter. I assume that it was received, but I am not sure.

Q. In connection with your duties as divisional merchandise manager of Taylor & Company, did Mr. Roth discuss any such letter with you? A. I can't be sure, to be honest with you. I think he did, but I can't be sure.

Q. Is Mr. Roth presently in Cleveland? A. Yes.

Q. Is he at the store? A. Yes. I assume he is. I haven't seen him to-day.

Q. Will you be good enough between now and to-morrow to inquire of him whether such a letter was received and whether or not he has the original of it? A. Yes.

5817

Q. Have you any objection to producing such a letter? A. If I can find it. I mean, with the files in the mess they are, anything might disappear.

(At this point a young lady appeared at the door of the hearing room.)

The Witness: May I be excused just a minute, Judge?

Examiner Bennett: Yes.

5818

*W. E. Miller—For Commission—Cross.*

The Witness: May I examine this a moment? Perhaps I can find this telegram.

Mr. Albert: Yes, sure. They seem to have sent over some correspondence. Will you look for the letter of February 26 from the Guild to Taylor & Company while you are at it, if you have no objection?

The Witness: I think both of them are here.  
(Paper writings to Mr. Albert by the witness.)

Mr. Albert: I offer this Respondents' Exhibits 40-A and B in evidence, the original of which has been presented by the witness.

Mr. Martin: You are satisfied that this is a copy?

The Witness: Yes, I am.

Mr. Martin: I have no objection.

Examiner Bennett: It will be received.

(Copy of letter referred to, heretofore marked for identification Respondents' Exhibits 40-A and 40-B, were marked as exhibits and received in evidence.)

Mr. Albert: In order to observe the sequence, Mr. Martin, have you any objection if I have this exhibit (referring to paper writing not marked) marked Respondents' Exhibits 38-B and C for Identification, the telegram responding to this particular exhibit being Respondents' Exhibit 38.

Mr. Martin: No. That is all right.

Mr. Albert: Will you mark this telegram 38-B and 38-C.

(Documents were marked for identification Respondents' Exhibits 38-B and 38-C.)

5819

5820



*By Mr. Albert.*

Q. Mr. Miller, I show you Respondents' Exhibits 38-B and 38-C and ask you if this is the telegram from the Guild to William Taylor Son & Company, to which Respondents' Exhibit 38 is the reply. A. Yes, I believe that is true. I did not receive this telegram, but I think that is true.

Mr. Albert: I offer in evidence Commission's Exhibits 38-B and 38-C.

Mr. Martin: This was received by your store?

The Witness: Yes.

Mr. Albert: That was taken from the Taylor files, Mr. Martin, and presented by the witness.

Mr. Martin: I just wanted to make sure, he said he had not received it personally. I have no objection to this being offered in evidence, your Honor, it being understood that the exhibits will be photostated, and a photostatic copy be placed in evidence and the original returned to the witness.

Mr. Albert: That is acceptable.

Examiner Bennett: All right, it may be so understood.

(Documents referred to, heretofore marked for identification Respondents' Exhibits 38-B and 38-C, were marked as exhibits and received in evidence.)

*By Mr. Albert.*

Q. Now, Mr. Miller, in Respondents' Exhibits 40-B and C, the third paragraph refers to "We are enclosing a copy of the Guild's statement in 'Women's Wear Daily' on Monday, February 24"; is that correct? A. Yes.

Q. Did you see that statement in "Women's Wear Daily"? A. I don't recall whether I did or not. I saw so many statements at that time.

5824

*W. E. Miller—For Commission—Cross.*

Q. Did you receive a copy of that statement together with the letter? A: I did not receive this letter so, therefore, I do not know.

Q. You have presented the letter from your files, have you not? A. That is correct.

Q. Do your files disclose that the statement in "Women's Wear" was received by William Taylor Son & Company together with the letter? A. I don't know that, sir. I did not look to see.

Q. Is there any reference in your files to the effect that the enclosure was not received? A. (Witness shakes head negatively.)

5825

Q. You say "No"? A. No.

Q. I show you Respondents' Exhibit 41, Mr. Miller, and ask you if this is the statement in "Women's Wear Daily" of Monday, February 24, 1936, referred to in Respondents' Exhibits 40-A and 40-B?

Mr. Martin: Your Honor please, I would like to object at this time. As I recall it, the witness testified that so far as he recalls, there was no enclosure; that is, rather, he does not know whether or not there was an enclosure with that letter. In view of that statement, I do not see how he could identify this as being something which he says he does not know anything about.

5826

Mr. Albert: Well, let us find out if the witness can identify it, your Honor.

(Document referred to was marked for identification Respondents' Exhibit 41.)

(Witness examines document.)

A. I presume that I read the statement, but I do not know whether it was enclosed in that letter or whether it was not. I could not testify to that fact.

By Mr. Albert.

Q. Did you read Respondents' Exhibits 40-A and 40-B?  
A. Did I read the letter?

Q. Upon its receipt at any time. A. I don't recall reading the letter, no.

Q. Did you discuss it with Mr. Roth? A. I may have, I honestly don't know. I presume I did discuss it, to some extent.

Q. Will you be good enough, Mr. Miller, to look in the files that have been sent to you and see if you can find this enclosure.

A. You mean here?

Q. Yes.

5828

(Witness refers to file.)

Q. Is that it? A. I don't know whether it is or not. This is not my file; understand.

Q. I mean the file that was presented by Taylor & Company. A. Yes, I believe it is.

Mr. Albert: I offer in evidence Respondents' Exhibit 41.

Mr. Martin: No objection.

Examiner Bennett: Received.

(Document referred to, heretofore marked for identification Respondents' Exhibit 41, was marked as an exhibit and received in evidence.)

5829

By Mr. Albert.

Q. Now you say that you read Respondents' Exhibit 41, approximately the time that it appeared in "Women's Wear"? A. I say I presume I did. I read most of those, and I presume that I read that one.

Q. You read some? A. I don't recall.

5830

*W. E. Miller—For Commission—Cross.*

Q. There was so much information with respect to the particular matter in hand that you cannot localize anything that you read? A. That is so.

Q. But undoubtedly you read that article; is that not so? A. That's probably true.

Q. Did you read this article, dated February 21, 1936, which is referred to in Respondents' Exhibit 41, in evidence? A. I presume I did; I don't recall definitely.

Q. I mean, you read it probably in the same way you read Respondents' Exhibit 41.

Mr. Martin: The witness testified he did not remember having read it.

5831

*By Mr. Albert.*

Q. You mean you do not recall the specific time you read it?

Mr. Martin: He did not say that.

Q. But you do remember the substance of it?

Mr. Martin: He did not—

Mr. Albert: Please permit me to ask him something as to what he meant, and not what you say.

Examiner Bennett: Yes, but do not ask him as to something he did not say.

Mr. Albert: I am asking him what he meant.

5832

Mr. Martin: The witness said he did not remember reading it.

*By Mr. Albert.*

Q. Did you read the substance of that article, Mr. Miller? A. I assume I did, but I don't recall distinctly.

Q. You mean you do not recall definitely because there were so many articles you did read; is that so? A. Yes.

Q. And undoubtedly you read this particular article among the others; is that not so? A. I probably did.

Q. From an examination of Respondents' Exhibit—

Examiner Bennett: That has not been marked.

Mr. Albert: Mark this Respondents' Exhibit 42.

(A paper was marked for identification Respondents' Exhibit 42.)

By Mr. Albert.

Q. From an examination of Respondents' Exhibit 42 for Identification, is the P. J. Reilly, Director, the same person referred to in Respondents' Exhibit 38, which reads, "P. J. Reilly, Director, Associated Merchandising Corporation, has full authority to act for us."

5834

Mr. Martin: Objected to.

Examiner Bennett: I will sustain the objection. I do not see that we are getting anywhere with this.

Mr. Albert: Exception.

Examiner Bennett: Let us have the question.

Mr. Albert: I offer in evidence Respondents' Exhibit 42 for Identification.

Mr. Martin: Objected to on the ground that it has not been properly identified by the witness, and on the further ground even if it had been identified, it is immaterial and irrelevant.

Examiner Bennett: Sustain the objection.

5835

Mr. Albert: May I most respectfully ask your Honor on which ground you are keeping it out?

Examiner Bennett: Well----

Mr. Albert: On the ground that no sufficient basis has been laid, or that it is entirely irrelevant?

Examiner Bennett: Each ground is valid as far as that is concerned; I—

Mr. Albert: Thank you. Exception.

Examiner Bennett: —I think it has not been properly identified; I think it is not of any consequence if it has been properly identified, as having been read by this man.

Mr. Albert: If your Honor feels that it is irrelevant under any circumstances, then I won't waste any further time trying to lay the foundation for identifying it.

Examiner Bennett: I think it is irrelevant.

Mr. Albert: Very well. Exception.

Examiner Bennett: All right.

*By Mr. Albert.*

Q. Mr. Miller, have you any knowledge with respect to the increase or decrease of your fixed prices of merchandise in your various Guild departments during 1935?

Mr. Martin: Objected to as not being proper cross-examination. The question of fixed prices was in no way gone into.

Mr. Albert: May I tell your Honor—

Examiner Bennett: Read the question, please. (Question read.)

Examiner Bennett: Sustained.

*By Mr. Albert.*

Q. Have you any knowledge with respect to any change in the sales price of your Guild lines during 1935?

Mr. Martin: Same objection.

Mr. Albert: Had I been permitted to receive an answer from the witness as to whether or not he had any knowledge or whether or not sales prices in Departments 330, 335 and 350 had been decreased during the months of May and June of 1935, the witness would have replied that those sales prices had been reduced.



Mr. Martin: I move that the same be stricken.

Examiner Bennett: It may be stricken.

Mr. Albert: Exception. If you will bear with me just a moment. I want to check off these items. It may facilitate the examination.

Examiner Bennett: Surely.

*By Mr. Albert.*

Q. Now, Mr. Miller, William Taylor Son & Company pride themselves on the honesty and probity of their business dealings, do they not?

Mr. Albert: There is no inference of any kind that I wish drawn from the question. I am merely laying a foundation for a subsequent question.

5840

Mr. Martin: Objected to; irrelevant, immaterial and not proper cross-examination.

Examiner Bennett: Sustained.

*By Mr. Albert.*

Q. William Taylor & Company stands behind its representations, does it not?

Mr. Martin: Objected to as being immaterial and irrelevant.

Mr. Albert: Foundation question, if it pleases the Court.

Examiner Bennett: Sustained.

5841

*By Mr. Albert.*

Q. I show you Respondents' Exhibit 34 and quote therefrom as follows: "Believing the policies declared by your members to be proper for the protection of the public, the retailer, and the manufacturer, we wish to go on record as stating our fixed business policy." You, of course, subscribed to that statement of policy?

Mr. Martin: Object.

5842

*W. E. Miller—For Commission—Cross.*

Q. On the part of William Taylor Son & Company, did you not?

Mr. Martin: Objected to.

Q. Speaking for William Taylor Son & Company?

Mr. Martin: Objected to as irrelevant and immaterial. The exhibit speaks for itself.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

*By Mr. Albert.*

5843

Q. Are you wholeheartedly in accord with the objectives of the Fashion Originators Guild?

Mr. Martin: Objected to as being irrelevant and immaterial.

Examiner Bennett: What is that question, please?

(Question read.)

Mr. Martin: And, furthermore, the fact is that there is in evidence an exhibit which fully states Taylor's position on this subject, and the exhibit will speak for itself.

Examiner Bennett: Sustained.

5844

Mr. Albert: Will Mr. Martin concede that the exhibits that are in evidence with respect to the fact that William Taylor Son & Company are wholeheartedly in accord with the objectives of the Fashion Originators Guild speak as of to-day?

Mr. Martin: I am not on the stand and I am not conceding anything.

Mr. Albert: I am asking if Mr. Martin will concede it. I am not asking you whether you are on the stand. I have had suspicions of that.

Mr. Martin: I say, I am not conceding anything.

Mr. Albert: Very well. Then, if it pleases the Court, I press the question with respect to their position to-day.

Examiner Bennett: I have ruled.

Mr. Albert: I beg your pardon?

Examiner Bennett: I say, I have ruled.

Mr. Albert: Exception: Now, I make an offer of proof, that if the witness had been permitted to answer the question he would have testified that William Taylor Son & Company is to-day fully in accord with the objectives of the Fashion Originators Guild as set forth in Respondents' Exhibit No. 35.

Mr. Martin: I move that the same be stricken from the record as obviously and apparently an offer of proof of something which the respondents' counsel could have no earthly knowledge.

Examiner Bennett: It may be stricken.

Mr. Albert: Of course the Commission has no knowledge of the opposite.

Examiner Bennett: It may be stricken.

5846

*By Mr. Albert.*

Q. Mr. Miller, during the time that you were a member of the Fashion Originators Guild—that you were a co-operators with the Fashion Originators Guild— A. Ha, ha, ha, ha.

Q. —did you return any dresses at the request of the Guild as being copies? A. We did.

Q. That is, after they had been demonstrated, or were you satisfied that they were copies? A. Correct.

Q. And in what price lines, generally speaking, were those dresses that were returned? Did they cover all the price lines? A. To the best of my knowledge they were in price lines at from \$4.75 cost through \$10.75 cost.

5847

Q. Yes. And of course you continued in that policy of co-operating with the Guild down until at least the end of 1935, generally speaking? A. Yes, that is right. May I ask a question before you proceed, Mr. Albert?

Q. Why—

The Witness: Your Honor—

Mr. Albert: I prefer you not to. I mean, that I think we will be able to bring out whatever you have in mind.

The Witness: (Nods head affirmatively.)

*By Mr. Albert.*

Q. I show you Respondents' Exhibit 37, and I show you Respondents' Exhibits 38-B and C, and I show you Respondents' Exhibit 38, and ask you after the reading of those exhibits whether or not you still testify that William Taylor Son & Company have no knowledge or expectation of the fact that they were to be red carded, and that the first information they had of it was what they read in "Women's Wear"? A. That is correct. I don't need to read these.

Q. I beg your pardon? A. My testimony was correct.

Q. Respondents' Exhibit 37 was sent to the Fashion Originators Guild on your behalf by P. J. Reilly of the Associated Merchandising Corporation informing the Guild that members of the Association therein listed were not going to further co-operate with the Guild; is that not so?

Mr. Martin: Objected to as being improper cross-examination; still trying to bring in this old subject of the A.M.C. That is an entirely improper question. Now he wants to cross-examine the witness on his own cross-examination.

Mr. Albert: Far from it, if it please the Court. In the light of the fact that the witness has testified

that he knew nothing at all about the red carding, had no inkling that they were to be red carded, I have introduced into evidence correspondence which leads to the conclusion that they had knowledge of it, and now I am attempting to show that they had specific knowledge of it and expected it.

Examiner Bennett: Well, now, red carding, as I understand it, is a definite thing. You have asked about that definite thing and the witness has testified it is a definite thing. What the preliminary steps are has nothing to do with this testimony in that respect. That might be all true and those documents and still what he says might be just as true.

5852

By Mr. Albert.

Q. I read to you from Respondents' Exhibits 38-B and

Mr. Martin: Do I understand your Honor to uphold my objection?

Examiner Bennett: Why, yes.

Mr. Martin: Well, then, I see no—

Examiner Bennett: I sustain the objection.

Mr. Martin: That is what I understood. I see no percentage in it.

Mr. Albert: I am not—I am on a different exhibit entirely.

5853

Mr. Martin: I understood your Honor—

Examiner Bennett: I think it has no bearing on this witness' testimony that the reading of the notice of red carding in that paper was his first knowledge of it.

Mr. Martin: I understand.

5854

*W. E. Miller—For Commission—Cross.**By Mr. Albert.*

Q. Prior to the time that you read of that notice in "Women's Wear," did William Taylor Son & Company have any expectation or any indication of the fact that they would be red carded?

Mr. Martin: Objection.

Examiner Bennett: Well, I will let him answer that question if he wants to.

The Witness: Would you read the question?

Q. (Question read.) A. I don't know.

5855

*By Mr. Albert.*

Q. Do you mean that you personally don't know that William Taylor Son & Company doesn't know—didn't know? A. We didn't know what to expect.

Q. You didn't know what to expect? A. Yes.

Q. But by reason of Respondents' Exhibit 37, Respondents' Exhibits 38-B and 38-C, and your telegram to the Fashion Originators Guild, being Respondents' Exhibit 38, you had informed the Fashion Originators Guild of the fact that you no longer were going to co-operate in their policy; isn't that so?

Mr. Martin: Objected to as being irrelevant and immaterial, still referring to the same letters on which your Honor has already ruled.

5856

Mr. Albert: But I have based another question on it, if it please the Court.

Examiner Bennett: Sustained. I don't see that it would mean anything to this record if he were to testify that they did expect it, that they had been expecting it for months.

Mr. Albert: The relevancy of it, if I may be permitted to be heard on it, your Honor, unless you



want to foreclose any examination on it, and you say that it is entirely immaterial and that you don't believe I could say anything that might change your mind. If your Honor feels that strongly about it I won't waste any time on it.

Examiner Bennett: I think it is of no service to me to have you argue. Of you want to make a short statement for the record I have no objection to that.

Mr. Albert: The witness, if it please the Court, has testified that the first that they knew that they were red carded is when they read about it in "Women's Wear." Now, I believe that that statement without any explanation thereof means and leads to an inference that suddenly without any warning Taylor & Company woke up and read in "Women's Wear" that they had been red carded, and it might lead to the inference that it was arbitrary, and there has been no other explanation of that fact from this witness. I am trying to bring out that this matter was not an arbitrary thing, that they did not suddenly wake up—

5858

Examiner Bennett: All right.

Mr. Albert: —and discover it, and that this witness, despite the fact that he has said nothing about it, did know about it, and William Taylor & Company did know about it and expected the red carding, and practically said, "We can't help ourselves since we are not co-operating with you. We expected to be red carded and that is the course that we expect that you will take."

5859

Examiner Bennett: It is all in the record.

Mr. Albert: Very well, your Honor.

Examiner Bennett: I think that the only thing that the statement shows is that the respondents red carded people without any direct notice from the respondents to the persons who were red carded.

5860

*W. E. Miller—For Commission—Cross.**By Mr. Albert.*

Q. You have testified, Mr. Miller, that by reason of the fact that merchandise manufacturers informed you that they were not going to deliver merchandise by virtue of the fact that you were no longer co-operating with the Guild, that it was unnecessary for you to send them any cancellations; is that substantially correct?

Mr. Martin: Objected to as having been gone into thoroughly.

Mr. Albert: Laying a foundation, if it please the Court.

5861

Examiner Bennett: I sustain the objection. We have been over that, thrashed it through.

*By Mr. Albert.*

Q. Now, in the light of your testimony, Mr. Miller, as to your failure to send cancellation slips to merchandise manufacturers, isn't it also true that it was unnecessary for the Fashion Originators Guild to send you any specific notice of red carding, in the light of your reply to Respondents' Exhibit 38, which ends: "Please advise by wire Monday afternoon if your store is amongst eighteen mentioned above. If we don't hear from you we will assume Reilly's letter applies to your store"?

Mr. Martin: Same objection.

5862

*By Mr. Albert.*

Q. And your reply to that telegram: "P. J. Reilly, Director, Associated Merchandising Corporation, has full authority to act for us." In the light of that—

Mr. Martin: Same objection.

Q. —In the light of that correspondence demonstrating the fact that William Taylor Son & Company had no in-

tention of further co-operating with the Fashion Originators Guild, were you not fully informed of the fact that a red card was issued by your own declaration of non-co-operation?

Mr. Martin: Same objection, your Honor.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

*By Mr. Albert:*

Q. Now, Mr. Miller, in addition to the records now in evidence, was any notification given to William Taylor Son & Company of the fact that they were to be red carded?

5864

Mr. Martin: Same objection, your Honor. That has been gone into time after time.

Examiner Bennett: Sustained.

*By Mr. Albert:*

Q. Isn't it a matter of fact, Mr. Miller, that Mr. Reilly was verbally informed after the receipt of the telegram from William Taylor & Company that Mr. Reilly represented William Taylor & Company, that William Taylor & Company, in the light of its announcement that it intended no longer to co-operate with the Fashion Originators Guild, would be red carded?

Mr. Martin: Same objection.

5865

Examiner Bennett: Sustained.

Mr. Albert: I am attempting to refresh the witness' recollection, if it please the Court. No testimony, as yet, has been given of the conversation, and he may have knowledge of it.

Examiner Bennett: I think you have done that very thoroughly.

Mr. Albert: Exception.

*By Mr. Albert:*

Q. Do you deny, Mr. Miller, that Mr. Reilly was verbally informed, after the receipt of Respondents' Exhibit 38, that William Taylor Son & Company was to be red carded?

Mr. Martin: Same objection.

Examiner Bennett: Sustained.

*By Mr. Albert:*

Q. Did Mr. Reilly inform you that he had been informed by the Fashion Originators Guild, after the receipt of Respondents' Exhibit 38, that William Taylor Son  
5867 & Company was to be red carded?

Mr. Martin: Objected to.

Examiner Bennett: Sustained.

Mr. Albert: Exception. I make this offer of proof: That if the witness had been permitted to answer as to communications between Mr. Reilly and the Fashion Originators Guild; the witness would have answered that Mr. Reilly was informed by the Fashion Originators Guild, after the receipt by it of Respondents' Exhibit 38, that the Guild intended to red card William Taylor Son & Company, and that Mr. Reilly informed William Taylor Son & Company thereof.

5868 Mr. Martin: I move the offer of proof be stricken.

Examiner Bennett: It may be stricken as irrelevant.

Mr. Albert: Exception.

*By Mr. Albert:*

Q. Do you understand, Mr. Miller, that the members of the Fashion Originators Guild are refusing to sell you

merchandise because it is no longer your policy to protect style originations?

Mr. Martin: Objected to. He has——

Examiner Bennett: Sustained.

Mr. Martin: —testified that they are refusing him. The question of what their reason is, of what he understands to be their reason, is pure conjecture.

Mr. Albert: Well, certainly, your Honor, if they are refusing to sell William Taylor & Company because they do not like William Taylor & Company's credit, then it should not be in this proceeding at all, and all that testimony should be stricken out; or because they do not like the name William Taylor & Company. There must be some relevancy to their refusal.

5870

Examiner Bennett: Let us have the question.

(Question read.)

Mr. Martin: He has already testified as to why they are refusing.

Examiner Bennett: Yes, I know that. I am going to let him answer and state what he——

The Witness: Let me have the question.

(Question read.)

A. As far as I know, we have never been given any definite answer.

5871

By Mr. Albert.

Q. No manufacturer has ever told you why they refused to sell you? A. As far as I know, they have not.

Q. And you have no idea why they refuse to sell you?

Mr. Martin: Objected to.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

5872

W. E. Miller—For Commission—Cross.

*By Mr. Albert.*

Q. From your knowledge of the industry, and from your knowledge of your co-operation with the Fashion Originators Guild, what is your opinion as to the reason why the manufacturers are refusing to—

Mr. Martin: Objected to.

Q. —sell you merchandise?

Mr. Martin: Objected to.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

5873

*By Mr. Albert.*

Q. Do you not know that if William Taylor Son & Company agree to protect the originations of manufacturers and refuse to permit their original designs to be copied, that they will then sell you merchandise?

The Witness: Will you please restate the question?

(Question read.)

Q. By "manufacturers," I mean members of the Guild.

A. According to the original agreement, we find, I believe, that was a part of it.

5874

Q. And that if you agree to protect styles they will only be too glad to sell you their merchandise; is that not so? A. That was part of the original agreement.

Q. Yes. Now, there are various factors, are there not, that must be taken into consideration in determining the validity of the percentages which are contained in Commission's Exhibit 473; is that not so?

Mr. Martin: Objected to: he has gone into those figures fully.



1959

*W. E. Miller—For Commission—Cross.*

5875

Examiner Bennett: Sustained.

Mr. Albert: Exception.

*By Mr. Albert.*

Q. Is it not a fact that the volume of sales in a particular department for a period of a year is affected by the number of promotional sales that occur in that department?

Mr. Martin: Objected to.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

*By Mr. Albert.*

5876

Q. Do you know how many promotional sales were had in either Departments 330, 335 or 350 during the period from February to June, 1935, and from February to June, 1936?

Mr. Martin: Objected to.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

*By Mr. Albert.*

Q. If there were a number of promotional sales in these departments referred to in 1935, and there were no promotional sales in these departments in 1936, would not that have had a great influence upon the percentage figures presented in Commission's Exhibit 473?

5877

Mr. Martin: Objected to.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

*By Mr. Albert.*

Q. Do you know how many promotional sales were had in Department 330 in the five months' period referred to in Commission's Exhibit 473 in 1935?

5878

*W. E. Miller—For Commission—Cross.*

Mr. Martin: Objected to.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

*By Mr. Albert.*

Q. For the same period of 1936?

Mr. Martin: Same objection.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

*By Mr. Albert.*

5879

Q. Is it not a fact, Mr. Miller, that the volume of sales is affected by the amount of advertising that is done in attempting to push the merchandise in the department?

Mr. Martin: Objected to.

Examiner Bennett: Sustained.

Mr. Albert: This line of testimony has not been gone into at all, if it please the Court.

Examiner Bennett: Well, you have been over it. You should have gone into it when you had the matter up. I am not going to have this cross-examination dragged over days and days. It is not fair to this witness.

Mr. Albert: Well, if it please the Court, the Commission has tendered him.

5880

Examiner Bennett: Yes.

Mr. Albert: He is here testifying.

Examiner Bennett: I have just said that is the reason why I am curtailing your cross-examination. Your cross-examination is unreasonably long, and diversified, and brings us—brings neither you nor anybody else very much. You have done some good work in your cross-examination and found some

errors, and I think that is all right, but you should have gone on and exhausted the subject when you took it up.

—Mr. Albert: Well, if your Honor please, with all due respect, I wish to be permitted to adopt the line of attack in my cross-examination that I deem best fitted—

Examiner Bennett: Yes.

Mr. Albert: To the particular witness, to the particular type of testimony.

Examiner Bennett: Yes.

Mr. Albert: That we have in mind, and I do not believe that we should be cut off from this further cross-examination on Commission's Exhibit 473 merely because I did not take up this particular line of attack at the time that I was examining with respect to Commission's Exhibit 473.

5882

Examiner Bennett: We have had a lot of testimony on the line that you are asking now, in Philadelphia, I think it was. It really meant nothing, because, as a matter of fact, the promotional work was usually a rather fixed proposition and it amounted to about the same in one year as in another—

Mr. Albert: Well, now—

Examiner Bennett: We went into all the figures of advertising.

Mr. Albert: I am willing to concede what you say, your Honor, but that is exactly what I find—

5883

Examiner Bennett: Yes, well—

Mr. Albert: —if it was fixed in 1935, did they do the same amount in 1936.

Examiner Bennett: Well, we are not going into it now and I am just giving you notice that we will not.

5884

*W. E. Miller—For Commission—Cross.*

Mr. Albert: Exception.

Examiner Bennett: It is not fair to this witness to try to keep him on the stand indefinitely.

Mr. Albert: I am not trying to keep him on the stand indefinitely, your Honor.

Examiner Bennett: It seems——

Mr. Albert: I am trying to exhaust his knowledge as to what he has testified to.

Examiner Bennett: That seems to be your tactics. You don't seem to be getting anywhere much. We have been liberal with you, allowed you to put in a whole lot of respondents' documents and make your case as far as you could, and now you are abusing that situation by dragging out this cross-examination to inordinate lengths and I am sorry that you are doing that.

5885

Mr. Albert: Well, I must respectfully disagree with the Court, very humbly disagree with the Court, as regards the necessity of my bringing out on cross-examination what this witness has testified to.

Examiner Bennett: Yes. Well——

Mr. Albert: I sincerely hope——

Examiner Bennett: An attorney of your experience and skill would have succeeded in doing that in half a day.

5886

Mr. Albert: Well, I——

Examiner Bennett: If they wanted to save time.

Mr. Albert: I am sorry, your Honor, but I do not think that there is any other way for me to do that than the way I have been doing it.

Examiner Bennett: Go ahead.

Mr. Albert: Maybe your Honor overestimates my ability to cut the cross-examination.

Examiner Bennett: Well, go ahead.

*By Mr. Albert.*

Q. Is it not true, Mr. Miller, that the advertising budget is supposed to reflect itself in the volume of sales?

Mr. Martin: Objected to.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

*By Mr. Albert.*

Q. Is it not true, Mr. Miller, that there is a ratio between advertising and sales?

Mr. Martin: Same objection.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

5888

*By Mr. Albert.*

Q. Have you any knowledge as to the amount of display space that was used by the departments referred to in Commission's Exhibit 473 during 1935?

Mr. Martin: Same objection.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

*By Mr. Albert.*

Q. Have you any knowledge as to the amount of display space that was used by the departments referred to in Commission's Exhibit 473 during 1936? 5889

Mr. Martin: Same objection.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

*By Mr. Albert.*

Q. Is it not true, Mr. Miller, that the volume of sales is affected considerably by the amount of the mark-up?

5890

*W. E. Miller—For Commission—Cross.*

Mr. Martin: Same objection.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

*By Mr. Albert.*

Q. What is, or what was the percentage of mark-up generally over cost of the merchandise sold in the departments referred to in Commission's Exhibit 473?

Mr. Martin: Same objection.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

5891

*By Mr. Albert.*

Q. Do you know that mark-up?

Mr. Martin: Same objection.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

*By Mr. Albert.*

Q. Are those figures available?

Mr. Martin: Same objection.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

*By Mr. Albert.*

5892

Q. Will you make those figures available to me if they are available?

Mr. Martin: Same objection.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

*By Mr. Albert.*

Q. Does service afforded by a store to its customer in any way affect the volume?



Mr. Martin: Now, if your Honor please, I respectfully suggest that counsel for the other side has heard your Honor's remarks on this line of cross-examination and I would like to know does he intend to continue willfully and deliberately in disregard to the Examiner's ruling?

Examiner Bennett: Yes. Well, I guess you will have to inquire of the attorney.

Mr. Albert: I mean, I am awfully sorry, your Honor, but as long as I differ with your principle I must make my record clear.

Examiner Bennett: Well, you are asking—

Mr. Albert: I will try to get through as fast as I can with my line of questions.

Examiner Bennett: You are asking questions that—so far as has been developed, and so far as you can develop any knowledge on the subject—of a witness who is incompetent to give it—

Mr. Albert: Well, now—

Examiner Bennett: And, as a matter of fact, they are rather innumerable objections to your—

Mr. Albert: If your Honor pleases, in the light of the fact your Honor has stated you will not permit me to elicit any information from him on this general line, I have in an endeavor to save time not asked all of the preliminary questions but have merely asked a single question to show what line of examination—

Examiner Bennett: Yes.

Mr. Albert: —in this respect I would have taken up.

Examiner Bennett: Yes.

Mr. Albert: Now, if Mr. Martin insists upon me asking all of those preliminary questions instead of demonstrating to the Court what line I

would like to pursue I will do that, and we are going to waste much more time. I am trying to save time—

Examiner Bennett: Yes.

Mr. Albert: —by admittedly asking questions—

Examiner Bennett: You are diligently engaged in saving time now—

Mr. Albert: I beg your Honor's pardon?

Examiner Bennett: I say, you are diligently engaged in saving time now, filling the record up with speeches that mean nothing.

Mr. Albert: I am sorry, I have got to protect the record, your Honor. If Mr. Martin insists on my asking preliminary questions, I will ask them—

5897

Examiner Bennett: I will not—

Mr. Albert: —I prefer to continue along with the line of questions I am asking.

Examiner Bennett: Go ahead and ask your questions and we will rule on them as they come up.  
(Question read.)

Mr. Martin: Objected to.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

*By Mr. Albert.*

5898

Q. Is not the volume of sales affected by the comforts afforded by the store to its customers in the appointments of the store, the ability of the fitters to fit the dresses, and of the tailors to assist in making up the line while the customer is there?

Mr. Martin: Objected to.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

By Mr. Albert.

Q. Who is the buyer for Department 330?

Mr. Martin: Objected to as irrelevant and immaterial.

Examiner Bennett: I think that has already been gone over.

Mr. Martin: I think so.

Examiner Bennett: And answered.

Mr. Albert: He has given us only two buyers, your Honor.

Examiner Bennett: Yes.

Mr. Albert: And I do not think he has mentioned the name of the department.

5900

Examiner Bennett: Well, you can ask him if there are any others.

By Mr. Albert.

Q. In addition to Miss Williams and Mrs. Howard; are those the correct names that you have given us? A. Yes.

Q. Are there any other buyers for the departments referred to in Commission's Exhibit 473? A. Yes, for the Department 360, Miss Griffith; 371 and 380, Mrs. Wamsler.

Mr. Albert: Would you mind repeating those names, Miss Reporter?

(Answer read.)

By Mr. Albert.

5901

Q. Which particular department does Mrs. Williams handle? A. 335 and 350; Mrs. Howard, 330.

Q. And, of course, that leaves 330 for Mrs. Howard? A. Yes, correct.

Q. How long has Mrs. Howard been the buyer of Department 330?

5902

*W. E. Miller—For Commission—Cross.*

Mr. Martin: Objected to as irrelevant and immaterial.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

*By Mr. Albert.*

Q. How long has Mrs. Wamser been the buyer for Departments 371 and 380?

Mr. Martin: Same objection.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

5903

*By Mr. Albert.*

Q. Now, is it not part of your duties, Mr. Miller, as divisional merchandise manager, to generally supervise the holding of promotional sales, the advertising budget, the distribution of display tables, the mark-up, the general service in the departments that I have previously asked you about?

Mr. Martin: Objected to, the witness has fully testified three or four times as to what his duties were.

Examiner Bennett: The objection is sustained.

Mr. Albert: Exception.

*By Mr. Albert.*

5904

Q. Now, Mr. Miller, is it not a fact that the amount of volume in a department is dependent upon size of the stock on hand?

Mr. Martin: Objected to.

Examiner Bennett: Sustained.

*By Mr. Albert.*

Q. And is it not a fact that the less stock you have on hand the less, of course, will be the volume?

Mr. Martin: Objected to.

Examiner Bennett: Sustained.

Mr. Albert: Exception to both questions.

Examiner Bennett: Yes.

By Mr. Albert.

Q. Now, Mr. Miller, you testified that the red carding of Taylor's has affected the good will of William Taylor Son & Company; is that not so? A. That is correct.

Mr. Martin: That is objected to; he has gone into that fully before.

Examiner Bennett: I am not—

Mr. Albert: I defy Mr. Martin to show me any place in the record where I have touched on this subject as yet. 5906

Examiner Bennett: I am not sure that the cross-examiner has touched on it. I am going to let him answer.

The Witness: Will you read the question?

(Question read.)

A. That is correct.

Mr. Albert: May we have a recess, your Honor, the customary afternoon recess?

Examiner Bennett: I beg your pardon?

Mr. Albert: I say, may we have the customary afternoon recess at this time? It is almost time for it. 5907

Examiner Bennett: Yes.

Mr. Albert: Thank you.

Examiner Bennett: Ten minutes.

(Thereupon a short recess was taken.)

Examiner Bennett: You may resume.

5908

*W. E. Miller—For Commission—Cross.**By Mr. Albert.*

Q. Now, Mr. Miller, will you not concede that manufacturing members of the Fashion Originators Guild also had a good will to protect in protecting the style originations from copying and style piracy?

Mr. Martin: Objected to, irrelevant and immaterial.

Examiner Bennett: Sustained.

*By Mr. Albert.*

5909

Q. Is not the good will of manufacturers who manufacture original designs affected when those original designs are copied or pirated?

Mr. Martin: Objected to as being irrelevant and immaterial.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

Examiner Bennett: I understand that that is not in issue, that the merits or otherwise of what the Guild is doing is not in issue.

Mr. Feldman: What was that last statement? (The statement was read.)

Mr. Feldman: It seems like a question of law to me.

5910

*By Mr. Albert.*

Q. Mr. Miller, will you concede that the program of the Fashion Originators Guild is of assistance to the industry in eliminating a recognized evil?

Mr. Martin: Objected to as being immaterial and irrelevant.

Examiner Bennett: Sustained.



By Mr. Albert.

Q. Mr. Miller, does William Taylor Son & Company presently—the question is withdrawn. Have you any objection to telling me whether or not William Taylor Son & Company presently protect style originations?

Mr. Martin: Objected to as being irrelevant and immaterial.

Examiner Bennett: May I have that question?

(The question was read.)

Examiner Bennett: Sustained.

Mr. Albert: Exception.

By Mr. Albert.

Q. Is style piracy an evil in the industry?

Mr. Martin: That is objected to.

Examiner Bennett: Sustained.

Mr. Albert: Exception. No further questions.

Mr. Martin: I have just one question I would like to ask the witness on redirect examination.

Redirect examination by Mr. Martin.

Q. Mr. Miller, referring to Respondents' Exhibits Nos. 24, 25, 26, 27, 28 and 29, also Nos. 30 and 31, 32; all relative to orders which were outstanding with Guild manufacturers at the time of the red carding of Taylor's store, were in fact any of those orders filled?

Mr. Albert: That is objected to, if it please the Court, as having been previously answered.

Mr. Martin: Now, if your Honor please, I think that is a very proper question. The respondents produced a number of exhibits dealing with that question and I simply want to ask this one question as to whether or not the orders with which the respondents' exhibits dealt were in fact filled.

5914

*W. E. Miller—For Commission—Redirect.*

Mr. Albert: Now, if it please the Court, I went into and exhausted the examination of the witness with respect to that very matter, and in addition I was curtailed in my cross-examination by Mr. Martin's objection to the effect that the witness had testified that none of the orders had been filled. Now we are opening it up all again. I have stopped at the point that I have stopped because of the fact that the Commission has indicated its desire to be in Detroit, and if we are going to Detroit, I want to leave as early as possible. If Mr. Martin is going to open up this examination again, I will resume my cross-examination where I left off at this time in an endeavor to co-operate with the Commission's desire to go to Detroit.

5915

Mr. Martin: I have only that one question.

Mr. Albert: Well, if the Court pleases, if that is the only thing that Mr. Martin believes that the witness needs rehabilitation on after all the errors that this witness has shown to exist in his testimony, I withdraw my objection.

Examiner Bennett: All right.

Mr. Martin: Go ahead and answer the question.

The Witness: No, none of the orders were filled.  
(Witness excused.)

5916

Mr. Martin: Now, at this time I will call upon the respondents to produce all correspondence between the Fashion Originators Guild of America with the Fashion Originators Guild manufacturers who are listed in Respondents' Exhibit No. 24 and referred to in Exhibits 25, 26, 27, 28, 29, 30 and 31 and 32 and relative to the filling of unplaced orders which were outstanding at the time Taylor was red carded.

Mr. Albert? May I suggest to Mr. Martin that I think it would be much more conducive to our not

producing those records if he waited until we got to Minneapolis for them. This is a fine time to ask us to produce records of that sort on the last day of the hearing when we are ready to go to Detroit without a single warning of what he might want with respect to that matter.

Mr. Martin: I don't think—

Mr. Albert: I say, we haven't got the records here, and I think that it is most unseemly of the Commission to attempt to put us in the position of refusing to give them any evidence of any kind whatsoever. We have been most solicitous in giving the Commission every piece of paper that they thought was relevant to the matter.

5918

Mr. Martin: I don't think—

Mr. Albert: Which is more than I can say for the Commission with respect to the evidence that they have presented, and I certainly don't think that any notice to produce of that kind should be made by the Commission at this stage of the proceedings.

Mr. Martin: I don't think that counsel for the respondents should be unduly worried, your Honor. He has not yet produced one single piece of paper during this entire hearing at the request of the Commission, so I don't see why he should get all excited over this now, if your Honor pleases.

Mr. Albert: Mr. Martin seems to forget the hundreds of exhibits that were put in in New York which were supplied.

5919

Mr. Martin: They came from our files.

Examiner Bennett: Just a moment. One at a time.

Mr. Martin: Which came from our files, your Honor, but that is beside the point.

Mr. Albert: If your Honor pleases, they came from the Commission's files, but they were given to the Commission by us.

Court Room No. 722,  
Federal Building,  
Detroit, Michigan,  
August 14, 1936.

Met, pursuant to adjournment, 11 A. M.

Before: JOHN W. BENNETT, *Examiner.*

(Same appearances.)

PROCEEDINGS.

Examiner Bennett: Are you ready to proceed?

Mr. Martin: Yes.

Examiner Bennett: Be in order, please. You may proceed.

Mr. Martin: Will you come around, Mr. Sapington?

Mr. Meder: If your Honor please, at the opening of this case, I would like to enter my appearance. I am Albert E. Meder, M-e-d-e-r, of Beaumont, Smith & Harris of Detroit, counsel for J. L. Hudson Company, one of the respondents in this case.

Examiner Bennett: All right.

*Louis B. Sappington—For Commission—Direct.*

5923

LOUIS B. SAPPINGTON was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

*Direct examination by Mr. Martin.*

Q. Now, Mr. Sappington, will you state your name and address, please, sir? A. Louis B. Sappington, 487 Arlington Drive, Birmingham, Mich.

Q. What is your occupation, Mr. Sappington? A. Assistant general merchandise manager.

Q. For whom? A. J. L. Hudson Company.

Q. In what business is J. L. Hudson Company engaged? A. Retail department store business.

5924

Q. Where is its place of business? A. Woodward Avenue, 1201 Woodward Avenue.

Q. In the city— A. Detroit.

Q. Do they operate more than one store? A. Just one store.

Q. What general type of merchandise does Hudson handle? A. Furnishings for the home, clothing for men, women and children.

Q. Do you carry a full line of ladies' garments? A. Yes. By "full," we carry a very comprehensive line.

Q. Mr. Sappington, what are your duties as the assistant general merchandise manager of the Hudson store? A. My duties are principally to supervise the women's and misses' ready-to-wear and accessory departments.

5925

Q. Do your duties include the buying of ladies' dresses? A. Not the buying, no.

Q. Do you have anything to do with the buying? A. Yes, the buyers and the merchandise managers report to me.

Q. Your store has a class of employees known as merchandise managers for ladies' dresses? A. Yes.

Q. Will you name them and give their departments—the names of your merchandise managers for ladies' dresses

5926 *Louis B. Sappington—For Commission—Direct.*

with their departments? A. I have two assistants. Mr. Walter Simmons, S-i-m-m-o-n-s.

Q. All right, sir. A. Mr. Walter Simmons, who merchandises women's dresses at all price lines. Do you want the names of the departments, and so forth, or just the merchandise that covers it?

Q. I think that will cover it, sir. A. Women's and misses' dresses in all price lines, women's and misses' sportswear.

Q. All right, sir. A. Mr. Herbert Dunham, the other assistant, merchandises women's and misses' coats, women's and misses' suits, furs, and sportswear accessories. These two men are known as assistant merchandise managers—  
5927 assistant divisional merchandise managers.

Q. Now, what, if any, contact do you have with Mr. Simmons and Mr. Dunham? A. Almost constant contact during business hours.

Q. Do they report to you? A. Directly.

Q. Do you supervise their activities? A. Yes, sir.

Q. Now, Mr. Sappington, do your buyers have anything to do with the sales end of their respective departments, and if so, what? A. They are responsible for the volume of business that they get; that is, they share the responsibility.

Q. Are they supposed to see to it that the merchandise which they have bought is disposed of in the usual course of business? A. Yes.  
5928

Q. Do you supervise the selling end of your departments as well as the buying end? A. Do you mean the sales people? I do not quite understand the question.

Q. You have testified that your buyers report to you and are supervised by you? A. That is right.

Q. You have testified that the buyers are also responsible for the disposal in the usual course of business of the merchandise which they have bought? A. That is right.



Q. Now, do your duties place you in supervision of the buyers as regards the disposal of goods? A. Right.

Q. Now, Mr. Sappington, in the regular course of business, in your position as assistant general merchandise manager of J. L. Hudson Company, do you, from time to time, make checks of the business of Hudson & Company to determine the trend of sales? A. Yes.

Q. Have you ever heard of the Fashion Originators Guild of America, Inc.? A. Yes.

Q. When did you first hear of this organization? A. Some time in the latter part of 1932.

Q. Did your store ever sign the Fashion Originators Guild "Declaration of Co-operation in Anti-Piracy"? A. Yes. 5930

Q. When did you sign that declaration? A. In June, 1933.

Q. Do you have a copy of that declaration with you? A. I have the original declaration with me.

Q. Let me see it, please.

(Witness hands paper to counsel.)

(The "Declaration of Co-operation" was marked for identification "Commission's Exhibit 475.")

*By Mr. Martin.*

Q. I hand you Commission's Exhibit 475 for Identification, and ask you if you can identify that paper? A. Yes, this is the original. 5931

Mr. Albert: If you will permit me to see it, Mr. Martin, I may concede it is a declaration, and you can offer it in evidence. You can save some time.

(Mr. Martin hands paper to Mr. Albert.)

Mr. Albert: No objection.

Examiner Bennett: Received in evidence.

5932

*Louis B. Sappington—For Commission—Direct.*

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Mr. Martin: I offer this in evidence as Commission's Exhibit 475.

Examiner Bennett: Received.

(The paper referred to, heretofore marked for identification "Commission's Exhibit 475," was marked as an exhibit and received in evidence.)

Mr. Keller: What is the date of it?

Mr. Martin: Apparently the only date is marked "June 22, Received."

Mr. Post: Is there a date at the bottom?

Mr. Martin: No, there is no date at the bottom.

5933

Mr. Post: Well, all right.

Mr. Martin: It is marked up here "June 22, Received."

Mr. Post: 1933, that is correct, is it not?

The Witness: Yes, 1933.

Mr. Martin: 1933.

*By Mr. Martin.*

Q. Is the declaration of co-operation, which is in evidence as Commission's Exhibit 475, between the Hudson Company and the Fashion Originators Guild of America, now in effect? A. No, it is not.

Q. When did that cease to be in effect? A. On the 14th of February, 1936.

5934

Q. Now, Mr. Sappington, from the time your firm started the declaration of co-operation, June 22, 1933, until that declaration became no longer effective, on February 14, 1936, did you, in any way, co-operate with the Fashion Originators Guild in its activities? A. Yes.

Q. Did you ever co-operate with them prior to the signing of the declaration? A. No, sir.

Q. Now, in what way did you co-operate with the Guild after you signed the declaration? A. We removed dresses

from sale and returned dresses to manufacturers which were adjudged to be copies by the Guild.

Q. Did you place on the orders for merchandise given by your store the Guild warranty stamp? A. Yes, sir.

Mr. Martin: Will you hand me Commission's Exhibit 306?

Mr. Albert: While you are looking for that exhibit, may I suggest that the best evidence of the stamp used on the order is the order bearing the stamp, and in order to save time I suggest that you put in evidence a copy of the order which will be just as satisfactory.

5936

*By Mr. Martin.*

Q. I show you Commission's Exhibit 475 and refer you to the last paragraph thereof, and ask you is that the stamp which you placed on your orders?

Mr. Albert: I object to the question, if it please the Court, upon the ground that the best evidence of the stamp they placed on their orders is an order bearing the stamp.

Examiner Bennett: That is true, I believe, if you have the stamp.

*By Mr. Martin.*

Q. Have you with you any orders bearing that stamp?

5937

A. No, I have not.

Q. Can you testify as to the identity of that? A. I believe that our stamp which we placed upon our orders was taken from this and is exactly the same (indicating).

Q. Now, did you place that stamp on all orders, Mr. Sappington? A. Yes, on all orders placed from the Ready-to-Wear Division.

Q. Ready-to-Wear Division? A. Coats, suits and dresses.

Examiner Bennett: Fix the time.

*By Mr. Martin.*

Q. That is, from the time you signed the declaration until February 14, 1936, this year? A. From approximately the time that we signed the declaration. I believe there were a few days elapsing until we could have the stamp made, and up to the time that we—that our declaration was returned.

Q. Did the manufacturers accept your orders with the stamps on them? A. Yes.

5939

Q. Now, in the fall of 1935, Mr. Sappington, did any manufacturers refuse to accept orders which were placed by your firm and which contained this stamp? A. Not that I know of.

Q. Does the Fashion Originators Guild of America employ a shopper in Detroit? A. Yes, sir.

Q. Do you know her name? A. Her name is Mrs. Miller.

Q. Did you ever meet her, or do you know her personally? A. Yes, sir.

Q. Have you ever encountered her in any of the departments of your store, in the performance of her duties? A. I have seen her in the store, yes.

5940

Q. What was she doing? A. Walking through the floor, looking at merchandise, about the same as a customer would do. I have also talked with her in my office about copies of Guild merchandise, and I have gone over sketches with her that the Guild has sent to her for identification, and so forth.

Mr. Albert: I ask that the latter part of the answer be stricken out, if the Court please, as not responsive to the question.

Mr. Martin: If your Honor please, I think it is Examiner Bennett: What is the question, please? (Question read.)

Mr. Albert: In the store.

Examiner Bennett: Overruled.

Mr. Albert: Exception.

*By Mr. Martin.*

Q. In what departments in your store have you encountered her? A. I couldn't say. I don't remember, except that they were on the garment floor; they were in the garment departments, in the dress departments.

Q. Now, did Mrs. Miller ever advise you or request you to return any of the garments which you have in stock to the manufacturer? A. Yes, sir.

Q. Can you testify as to the number of garments, or as to the number of instances in which garments were returned to the manufacturer at the request of the Guild shopper? A. No, sir.

Mr. Albert: What was that answer?

The Witness: "No."

5942

*By Mr. Martin.*

Q. Were any garments ever returned at her request?

A. Yes, sir.

Q. Can you give the dates and occasions of any of these returns? A. No, sir.

Q. Can you give the names of any manufacturers to whom dresses were returned at her request? A. No, sir.

Q. Mr. Sappington, when was the J. L. Hudson Company red carded? A. On the 14th of February. We received word on the 15th.

Mr. Albert: I ask that the answer be stricken out, if it please the Court, as unintelligible. I don't know what he means by "On the 14th, we received word on the 15th."

5943

Mr. Martin: I think the answer is fully responsive to the question, your Honor, and perfectly intelligible to any man of reasonable intelligence.

Examiner Bennett: Denied.

5944

*Louis B. Sappington—For Commission—Direct.*

Mr. Albert: I press my objection, if it please the Court.

Examiner Bennett: It is denied.

Mr. Albert: Exception.

*By Mr. Martin.*

Q. Mr. Sappington, will you tell me briefly what was the first knowledge which the J. L. Hudson Company had that it had been red carded?

Mr. Martin: May I ask that that question be repeated?

(Question read.)

5945

Mr. Albert: That is objected to as being immaterial.

Examiner Bennett: Overruled.

Mr. Albert: Exception.

*By Mr. Martin.*

Q. Go ahead and answer. A. We received word from the Detroit representative of "Women's Wear."

Q. That was the first knowledge you had of being red carded? A. Yes, sir.

Q. Did you subsequently receive any further notice of being red carded? A. Yes, sir.

Q. Did you receive any notice directly from the F.O.G.A.? A. Yes, sir.

5946

Q. What notice did you receive? A. We received a letter from Mr. Post. No, excuse me. From Mr. Golby.

Q. Have you that letter? A. Yes.

(A letter was marked for identification Commission's Exhibit 476.)

Q. I hand you Commission's Exhibit 476 for identification, and ask can you identify that? A. That is the notice



that we received from the Fashion Originators Guild of America that we had been red carded.

(Letter was handed to Mr. Albert.)

Mr. Albert: No objection.

Examiner Bennett: Received as Commission's Exhibit 476.

(Letter referred to, heretofore marked for identification Commission's Exhibit 476, was marked as an exhibit and received in evidence.)

*By Mr. Martin.*

Q. Mr. Sappington, what, if anything, did you do after you received the notice of red carding as set out in Commission's Exhibit 476? 5948

Mr. Albert: May I ask that that question be repeated?

(Question read.)

A. We attempted to go ahead in our buying just the same as we had in the past.

*By Mr. Martin.*

Q. Did you have any correspondence with the Fashion Originators Guild in reply to their letter of February 14 as set out in Commission's Exhibit 476? A. Yes. We wrote a letter to the Guild—wrote a letter to the Guild on the 27th of February. This is a copy of the letter which was written. 5949

Mr. Martin: Mark that for identification, will you, please, sir, 477-A and B.

(Letter was marked for identification Commission's Exhibits 477-A and 477-B.)

5950

*Louis B. Sappington—For Commission—Direct.**By Mr. Martin.*

Q. I hand you Commission's Exhibits 477-A and B for Identification, and ask if you can identify them? A. Yes. This is a copy of the letter which was sent to the Guild acknowledging the receipt of their letter of February 14.

Q. What is Commission's Exhibit 477-B? A. This is a return receipt signed by the Guild, return receipt for the registered letter.

Mr. Martin: I offer this in evidence, Commission's Exhibits 477-A and B.

(Papers were handed to Mr. Albert.)

5951

Mr. Albert: No objection.

Examiner Bennett: Received as Commission's Exhibits 477-A and 477-B.

(Documents referred to, heretofore marked for identification Commission's Exhibits 477-A and 477-B, were marked as exhibits and received in evidence.)

*By Mr. Martin.*

5952

Q. Now, Mr. Sappington, after you had gotten this notice and had written to the Fashion Originators Guild, as set out in Commission's Exhibit 477-A, what happened then? A. When our buyers went into the market to buy merchandise those houses which belonged to the Guild refused to sell them. Also, all merchandise that was on order with Guild houses at the time that we were black-listed—

Mr. Albert: If it please the Court, I ask that the latter part be stricken out.

Mr. Martin: Now, if your Honor please—

Examiner Bennett: There is no need of argument. Denied.

*By Mr. Martin.*

Q. Go head.

Mr. Albert: Exception.

A. At the time that we were blacklisted, those houses with which we had merchandise on order refused to deliver.

Q. Did your buyers attempt to gain access to the manufacturers who were members of the Guild? A. They—

Q. Were they denied access by these Guild manufacturers? A. Yes, sir.

Q. Can you testify as to which buyers tried to obtain access? A. Yes, sir.

5954

Q. Who were those buyers?

(Witness searches files.)

A. Miss Costello, who buys junior wear; Miss Reicke, who buys suits.

Mr. Albert: Sorry. I didn't get that name.

The Witness: Reicke.

Mr. Albert: Reicke?

The Witness: R-e-i-c-k-e.

Mr. Albert: What was she the buyer for?

The Witness: Suits.

*By Mr. Martin.*

5955

Q. Was that Miss Costello? A. C-o-s-t-e-l-l-o.

Q. What does she buy for? A. Junior wear.

Q. All right, sir. Miss Briggs, B-r-i-g-g-s, who buys coats and evening wraps; Miss Hromek, H-r-o-m-e-k, who buys sportswear; Miss Kimball, who buys women's dresses; Miss Fowler, who buys for our gown sheet; Mr. Touff, T-o-u-f-f, who buys for three departments, women's and misses' dresses.

5956

*Louis B. Sappington—For Commission—Direct.*

Q. Now, is that all, Mr. Sappington? A. Yes.

Q. Now, Mr. Sappington, what manufacturers refused access to Miss Costello? A. Miss Costello was refused access by Aywon Dress Company and Junior Guild Frocks.

Q. Any others? A. That is all.

Q. Who refused access to Miss Reicke? A. Grossman-Seigel.

Q. Any others? A. That is all.

Q. What Guild manufacturers refused access to Miss Briggs? A. Aaron's, Bernstein & Aaron; Carmel Brothers; Delmonte Hicke; Bender, Shell & Company; Louis Goldstein; Grossman-Seigel; Philip VanGon.

5957

Q. What manufacturers refused access to Miss Hromek? A. Gane; Wile; Adler & Adler; Star Maid; Sport Craft; Mutual; Rosenbloom; Bernard Appel.

Q. What Guild manufacturers refused access to Miss Fowler? A. Max Heit; Rose Sperrick & Laum; Herman Beispell; Perlas & Gilbert; Straus; Miller.

Q. What Guild manufacturers refused access to Mr. Touff? A. Lila Modes; Aywon Dress; International Dress; Whitlan & Schneider; C. H. D. Robbins.

Mr. Albert: Take it a little easy, Mr. Sappington.

The Witness: International Dress. Got that one?

5958

Mr. Albert: Yes.

The Witness: Whitlan & Schneider, C. H. D. Robbins, Brentner & Swessman, Milton Altmark, Mary Lee, Frank Starr-Friedlander, A. Goodman, Caplan Moskowitz, Henry Ganz, Eastman & Bard, Robinson Brothers, Matthes-Sedutzky.

Mr. Albert: Thank you.

The Witness: I have some additional manufacturers here on the junior line.

*By Mr. Martin.*

Q. Well, are those all of the manufacturers who refused access to buyers? A. No.

Q. How? A. Here are some more for the Junior Miss Department, under Miss Costello: Ashley Frocks—in addition to the two I gave you, there are Ashley Frocks, Bon Ray, Daytime Frocks, R. Goldfarb, and Jo-Ann Junior, or Jo-Anne, I think some people call it, Joane.

Q. Is that all? A. Yes.

Q. Now, Mr. Sappington, can you testify as to the names of the Guild houses from whom your store purchased dresses in 1935? A. Yes, sir.

Q. Have you a list of those? A. I think so.

5960

(A paper was marked for identification Commission's Exhibit 478-A.)

*By Mr. Martin.*

Q. I hand you Commission's Exhibit 478-A for Identification, and ask you can you identify that list? A. Yes, this is a list of the Guild houses that we used, that were used by our dress departments in 1935, also indicating those houses that are not with the Guild now but were in 1935.

Mr. Martin: I offer this in evidence as Commission's Exhibit 478-A.

Mr. Albert: May I question on the voir dire, your Honor?

5961

Examiner Bennett: Yes.

*By Mr. Albert.*

Q. Mr. Sappington, who prepared this list (indicating)? A. That was prepared by the clerical staff in the stock control office of our garment division.

5962

*Louis B. Sappington—For Commission—Direct.*

Q. Did you check it for accuracy? A. I didn't check it against our records myself, no.

Q. Except for the fact that it was presented to you as having been prepared in your stock control room, you know nothing as to its accuracy? A. Well, I am familiar with a great many of the houses that are on that list. I know that we did business—I know offhand that we did business with a great many of those houses without having to check it.

Q. But you do not know that you did business with all of those houses, do you? A. Not with every one.

5963

Q. And you do not know whether or not any of the houses have been omitted, do you? A. Only as this list was given to me by our own employees who checked it.

Q. What period does this list encompass? A. From 1935.

Q. From when to when? A. From the 1st of February, 1935, to the 31st of January, 1936; that is our fiscal year, 1935.

Q. From whence was the information taken with respect to the houses allegedly not in the Guild at the present time? A. Either from word that we received from those houses, or information that was given to our office by our buyers.

Q. Where did your buyers get the information from? A. From the houses.

5964

Mr. Albert: May it please the Court, I object to the introduction of this list at the present time on the ground that no proper foundation has been laid; on the further ground that no foundation has been laid whatsoever as to the truth or accuracy of the notations of certain houses that have resigned from the Guild.

Mr. Martin: If your Honor please, may I ask a few more questions?

Examiner Bennett: Yes.



*By Mr. Martin.*

Q. Mr. Sappington, was this list prepared for you by your employees at your request, in the usual course of business? A. Yes, sir.

Q. It is such information as is relied on by you in the usual course of business? A. Yes.

Q. Do you believe this to be a true and accurate list? A. Yes, sir.

Mr. Martin: I offer it in evidence, your Honor, Commission's Exhibit 478-A.

Mr. Albert: I renew my objection.

Examiner Bennett: Overruled; received.

Mr. Albert: Exception.

5966

(List of Guild houses used by dress departments in 1935, heretofore marked for identification Commission's Exhibit 478-A, was marked as an exhibit and received in evidence.)

(List of "Guild Houses with whom we did business during 1935 in the Better Coat Department and Evening Wrap Department" was marked for identification Commission's Exhibit 478-C.)

(List of "Guild Houses with whom we did business in the Suit Department in 1935" was marked for identification Commission's Exhibit 478-B.)

*By Mr. Martin.*

5967

Q. I hand you Commission's Exhibit 478-B, for identification, and ask can you identify that? A. It is a list of Guild houses with whom we did business in our suit department in 1935.

Q. Was that list prepared by you? A. No, sir.

Q. Was it employed for you by your employees at your request? A. Yes.

Q. In the usual course of business? A. Yes, sir.

5968

*Louis B. Sappington--For Commission--Direct.*

Q. It is relied on by you in the usual course of business?

A. Yes, sir.

Q. You are satisfied as to its accuracy and correctness?

A. I am.

Mr. Martin: I offer that in evidence, your Honor, Commission's Exhibit 478-B.

Mr. Albert: Same objection, if it please the Court.

Examiner Bennett: Same ruling; overruled; received.

(The list referred to, heretofore marked for identification Commission's Exhibit 478-B, was marked as an exhibit and received in evidence.)

5969

*By Mr. Martin.*

Q. I hand you Commission's Exhibit 478-C, for identification, and ask you if you can identify that? A. This is a list of Guild houses with whom we did business in 1935 in the Better Coat Department and in our Evening Wrap Department.

Q. Was that prepared by you? A. No, sir.

Q. Was it prepared for you by your employees at your request in the usual course of business? A. Yes, sir.

Q. And, as such, is relied on by you? A. Yes, sir.

Q. And you believe it to be correct? A. Yes, sir.

5970

Mr. Martin: I offer this in evidence, your Honor.

Mr. Albert: Same objection as has been previously made to the admission of Commission's Exhibit 478-A.

Examiner Bennett: Same ruling; overruled; received.

Mr. Albert: Exception.

(List referred to, heretofore marked for identification Commission's Exhibit 478-C, was marked as an exhibit and received in evidence.)

*By Mr. Martin.*

Q. Now, Mr. Sappington, at the time the J. L. Hudson Company was red carded on February 14, 1936, were there any orders outstanding with manufacturers who were a member of the Guild? A. Yes, sir.

(Papers were thereupon marked for identification Commission's Exhibits 479-A, 479-B and 479-C.)

*By Mr. Martin.*

Q. I hand you Commission's Exhibits 479-A, B and C, and ask you if you can identify that? A. This is a list of outstanding orders with Guild houses on the 15th of February, 1936.

5972

Q. Was that list prepared by you? A. No, sir.

Q. By your employees for you at your request in the usual course of business? A. Yes, sir.

Q. And, as such, is relied on by you? A. Yes, sir.

Q. You are satisfied as to the accuracy of that paper? A. Yes, sir.

Mr. Martin: I offer that in evidence, your Honor, as Commission's Exhibits 479-A, B and C.

Examiner Bennett: Do you have quite some more of this examination?

Mr. Martin: Yes, I have quite a good deal.

Examiner Bennett: All right, I think we had better take a recess pretty soon—give you a rest of a few minutes.

5973

The Witness: Yes.

Mr. Albert: I renew my objection to Commission's Exhibit 479 upon the same grounds previously interposed with respect to Commission's Exhibit 478-A.

Examiner Bennett: Overruled. Received.

Mr. Albert: Exception.

5974

*Louis B. Sappington—For Commission—Direct.*

(Documents referred to, heretofore marked for identification Commission's Exhibit 479-A, B and C, were marked as exhibits and received in evidence.)

Examiner Bennett: We will take a recess of not exceeding ten minutes.

Mr. Martin: Yes, your Honor.

(There was a short recess taken.)

*By Mr. Martin.*

5975

Q. Now, Mr. Sappington, referring to Commission's Exhibits 479-A, B and C, which is a list of merchandise on order with Guild houses and outstanding as of February 15, 1936, were these orders filled by the Guild manufacturers with whom they were placed? A. No, sir.

Q. Were any of them filled? A. Yes, sir.

Mr. Albert: Is that "yes, sir" or "no, sir"?

The Witness: Yes, sir.

*By Mr. Martin.*

Q. Do you know how many of these orders were filled? A. No, sir.

Q. Can you tell me approximately how many of them were filled, about? A. About \$2,000 out of the total amount.

5976

Q. Do you know the manufacturers who filled these orders? A. No, sir.

Q. With the exception of approximately \$2,000 of these orders as shown on this list, your testimony is that the balance were not filled? A. Yes, sir.

Q. At the time of the red carding—withdraw that question. Are you familiar, Mr. Sappington, with what is meant by the term "hot numbers" in the trade? A. Yes, sir.

(There was a discussion off the record.)

Mr. Martin: What is that question?

(The question was read.)

*By Mr. Martin.*

Q. Did you have any hot numbers which had been supplied by Guild manufacturers? A. Yes, sir.

Q. Did you attempt to place any reorders? A. Yes, sir.

Q. Were the reorders accepted? A. No, sir.

Q. Since the time you were red carded on February the 14th, 1936, have you been able to buy any garments from Guild manufacturers from whom you had previously been buying?

5978

The Witness: May I ask you to repeat that, please?

(The question was read.)

A. Yes, sir.

Q. To what extent? A. Slightly.

Q. Do you know when you last attempted to obtain merchandise from Guild sources? A. Not exactly.

Q. Can you state approximately the time? A. February and March of 19—of this year.

Examiner Bennett: This document hasn't been offered, has it (indicating Commission's Exhibits 479-A, B and C)?

Mr. Martin: Yes, that has been offered and received. 5979

Mr. Albert: That is 479-A, B and C.

Examiner Bennett: I know what it is.

Mr. Martin: It was offered just before recess.

*By Mr. Martin.*

Q. Mr. Sappington, did your ladies' ready-to-wear business—is your ladies' ready-to-wear business divided into departments? A. Yes, sir.

5980

*Louis B. Sappington—For Commission—Direct.*

Q. Will you give me the names of those departments?

A. Women's suits, women's inexpensive coats, women's better coats, women's better dresses, inexpensive evening gowns, misses' inexpensive coats, misses' better coats, misses' better dresses, the Gown Shop, women's inexpensive dresses, women's moderate priced dresses, misses' inexpensive dresses and misses' moderate priced dresses.

Mr. Albert: I think that is a repetition.

A. (Continuing) Junior apparel, sports accessories. I believe that department is called blouses and sweaters. Excuse me. Blouses and sweaters. Sportswear, furs.

5981

Mr. Albert: Just a minute, Mr. Martin. Would you mind repeating those?

(The answer was read.)

*By Mr. Martin.*

Q. Mr. Sappington, what, do you know, is the department number of women's suits? A. 300.

Q. What department number is women's inexpensive coats? A. 311.

Q. Women's better coats? A. 312.

Q. Women's better dresses? A. 338.

Q. Women's inexpensive evening gowns? A. 339.

Q. Misses' inexpensive coats? A. 345.

Q. Misses' better coats? A. 346.

5982 Q. Misses' better dresses? A. 358.

Q. The Gown Shop? A. 359.

Q. Misses' inexpensive dresses? A. 366.

Q. Misses' moderate priced dresses? A. 367.

Q. Misses' inexpensive dresses? A. 368.

Q. Misses' moderate priced dresses? A. 369.

Q. Junior apparel? A. 371.

Q. Blouses and sweaters? A. 381.

Q. Sportswear? A. 385.



*Louis B. Sappington—For Commission—Direct.*

5983

Q. And furs? A. 400.

Q. Mr. Sappington, in what price range did you buy dresses from the Guild manufacturers? A. \$10.75 up.

Q. At what price were the bulk or the majority of dresses bought from Guild manufacturers?

Mr. Albert: That is objected to, if it please the Court, calling for the conclusion of the witness, no foundation has been laid, and it is entirely too indefinite in general to be of any particular worth. I don't think the Commission is—

Examiner Bennett: If he knows.

*By Mr. Martin.*

5984

Q. Do you know? A. At what price?

Q. At what price line the bulk of your F.O.G.A. business was? A. No.

Q. You can't testify as to that? A. I can testify as to what the price line—

Mr. Albert: If it please the Court, I think the witness should be subjected to questioning and not the volunteering of any information. He has testified that he can't tell us what price line constituted the bulk of his purchases. Now, if Mr. Martin has any further questions, I suggest that he ask them and that the witness not volunteer anything. I object to any volunteering of any information.

5985

Examiner Bennett: You were going to say what knowledge you had. What is it?

Mr. Albert: Exception.

*By Mr. Albert.*

Q. Go ahead. A. I could tell you that at \$10.75 we buy more pieces than at any other price line.

5986

*Louis B. Sappington—For Commission—Direct.*

Q. You buy more pieces at \$10.75?

Mr. Albert: Objected to. The answer is not responsive, and I ask that it be stricken.

Examiner Bennett: I have ruled on the objection.

Mr. Albert: Exception.

Examiner Bennett: You may have an exception.

*By Mr. Martin.*

5987

Q. To the best of your knowledge, Mr. Sappington, how long has the Guild membership included manufacturers in the brackets below \$10.75?

Mr. Albert: That is objected to as calling for the conclusion of the witness, no proper foundation has been laid qualifying this man in Detroit as an expert on what the Fashion Originators Guild has done in New York.

Examiner Bennett: Well, you may lay a foundation, and find out about it.

Q. Do you know whether or not Guild merchandise has any manufacturers who manufacture garments in the price brackets below \$10.75?

5988

Mr. Albert: That is objected to, if it please the Court, as entirely immaterial; no proper foundation has been laid; merely a repetition of the previous question. This man is not an expert on what the Guild comprises.

Examiner Bennett: Overruled; he may answer.

Mr. Albert: Exception.

A. I don't know now, no.

*By Mr. Martin.*

Q. Do you know whether they ever had any manufacturers below \$10.75?

Mr. Albert: Same objection.

Examiner Bennett: Well, I will find out what he knows.

Mr. Martin: You may answer.

Examiner Bennett: Overruled.

Mr. Albert: Exception.

A. Yes, sir.

Q. Do you know when they first had manufacturers in the brackets below \$10.75?

5990

Mr. Albert: Same objection.

Examiner Bennett: Overruled.

Mr. Albert: Exception.

A. No, sir.

*By Mr. Martin.*

Q. Have you ever bought any garments from Guild manufacturers at cost, less than \$10.75?

Mr. Albert: That is objected to as having been previously answered, if it please the Court.

Mr. Martin: I think it is a perfectly proper question, your Honor; it has not been answered.

5991

Mr. Albert: The question was once given; there was a previous specific answer.

Mr. Martin: Refer to the record and see if there was an answer.

Mr. Albert: Well, refer to the record, Mr. Martin.

Examiner Bennett: Just a moment; objection overruled; you may answer.

5992

*Louis B. Sappington—For Commission—Direct.*

Mr. Martin: You may answer.

Mr. Albert: Exception.

A. Yes, sir.

*By Mr. Martin.*

Q. When did you buy garments from Guild manufacturers at prices less than \$10.75? A. During the year 1935.

Q. What part of the year 1935? A. I believe in both the spring and fall seasons.

5993 Q. How long have you been assistant general merchandise manager of the Hudson Company? A. Six years.

Mr. Albert: Congratulations, Mr. Martin.

*By Mr. Martin.*

Q. How long have you been in the employ of the Hudson Company? A. About eight and one-half years.

Q. Now, in your position as assistant general merchandise manager, are you familiar with the policies of the Hudson Store: that is, the general merchandise? A. Generally, yes.

Q. The general policies of the store? A. Yes.

5994 Q. Prior to the time that the Hudson Company signed the declaration of co-operation, what was the policy of your store relative to the purchasing of garments which were alleged to be copies of other garments? A. We had no policy.

Q. Did you buy garments without regard as to whether or not they were copies? A. Yes.

Mr. Albert: What was the answer?

The Witness: "Yes."

*Louis B. Sappington—For Commission—Direct.*

5995

Q. Did Hudson & Company voluntarily sign this declaration?

Mr. Albert: Now, if it please the Court, Mr. Martin certainly has sufficient experience in the trial of a case to know that that question is not only objectionable, but obnoxious to every single court. It calls for a conclusion of the witness as to a matter of law. It is the most leading question that could possibly be asked of a witness, and the only purpose of asking that question of the witness in the face of my having gotten up and informed Mr. Martin and told him of the fact that it was leading was in order to apprise the witness of exactly the answer Mr. Martin wants to his succeeding question.

5996

I think that type of questioning on the part of the Commission should be absolutely cut off by your Honor, and that Mr. Martin should be admonished to ask his questions in proper legal form. I do not think there can be one iota of doubt about the fact that the sole purpose of that question was to warn and apprise the witness of the answers that were necessary and were wanted by the Commission as to future questioning, because I do not think Mr. Martin, for whom I have great respect as to his legal ability, thinks for one moment that that question will be sustained by the Commission.

5997

• Examiner Bennett: I will sustain the objection to that particular question.

Mr. Martin: All right.

(Question read as follows: "Q. Now, Mr. Sappington, you have testified that Hudson & Company signed a declaration of co-operation in June; I believe it was the 22nd of June, 1933; what were the reasons for signing this declaration?")

5998

*Louis B. Sappington—For Commission—Direct.**By Mr. Martin.*

Q. Do you know the reasons they signed the declaration?

Mr. Albert: That is objected to as immaterial, and he certainly knows the reasons now after that last question of Mr. Martin's.

Examiner Bennett: Overruled; you may answer.

Mr. Albert: Exception.

*By Mr. Martin.*

Q. Do you know why you signed the declaration? A.

5999 Yes, sir.

Q: Why did you sign the declaration.

Mr. Albert: That is objected to as calling for the operation of the witness' mind; calling for a conclusion of the witness; no proper foundation has been laid.

Examiner Bennett: All right.

Mr. Albert: As being irrelevant to the complaint of the Commission.

Mr. Martin: Go ahead and answer.

Examiner Bennett: I am going to hear what he has to answer.

Mr. Albert: Exception.

6000

A. We signed the declaration of co-operation because we received a letter from the Fashion Originators Guild, signed by Mr. Rentner, stating that the members of the Fashion Originators Guild would not show their lines to buyers, unless the store which those buyers represented signed the declaration of co-operation prior to July 5, 1933.

Mr. Albert: Now, if it please the Court, I move that the answer be stricken on the ground that the best evidence of the letter referred to in the answer



is the letter itself, and I renew my objection and ask that the answer be stricken upon the previous grounds interposed with respect to the question.

Examiner Bennett: Yes. Well, I am going to deny the motion.

Mr. Albert: Exception.

*By Mr. Martin.*

Q. Have you a copy of the letter you referred to? A. Yes, sir.

Q. Will you let me see it?

Mr. Martin: Mark this the next number, A, B, C and D.

6002

(Document was marked for identification Commission's Exhibits 480-A, 480-B, 480-C and 480-D.)

*By Mr. Martin.*

Q. I show you Commission's Exhibits 480-A, B, C and D for identification, and ask if you can identify that letter? A. Yes.

Q. What is it? A. It is a letter addressed to me by Maurice Rentner of the Fashion Originators Guild stating the Guild—

Mr. Albert: If it please the Court, I object to any statement of what is in the letter.

Examiner Bennett: What is the date?

6003

*By Mr. Martin.*

Q. What is the date? A. June 16, 1933.

Q. Does it contain any enclosures? A. Yes, sir.

Q. What are they? A. Enclosures: Memorandum on the Guild's resolution and its significance.

6004

*Louis B. Sappington—For Commission—Direct.*

Mr. Martin: I offer that in evidence, your Honor, as Commission's Exhibits 480-A, B, C and D.

Examiner Bennett: We will take a recess for luncheon until 2.15.

Mr. Martin: Until 2.15?

Examiner Bennett: Yes.

(Whereupon, at 12.45 o'clock P. M., a recess was taken until 2.15 o'clock P. M. of the same day.)

6005

AFTERNOON SESSION, 2.15 P. M.

(The documents referred to, heretofore marked for identification Commission's Exhibits 480-A, 480-B, 480-C. and 480-D, were marked as exhibits and received in evidence.)

*By Mr. Martin.*

Q. Now, Mr. Sappington, referring to Commission's Exhibits 479-A, B and C, which is a list of orders with Guild houses outstanding at the time of red carding, were any of these orders cancelled by J. L. Hudson Company? A. No.

6006

Q. Are they still outstanding as far as Hudson Company records show? I mean by that, that they have not been cancelled on your records? A. They have not been cancelled.

Q. Would you have accepted delivery of these orders if the same had been tendered? A. Within reasonable time, yes.

Q. Mr. Sappington, have you in the ordinary course of your business, made any study to determine the effect on Hudson's business in the affected departments of being red carded by the Fashion Originators Guild?

*Louis B. Sappington--For Commission--Direct.*

6007

Mr. Albert: That is objected to, if it please the Court. There is no testimony in the evidence that any department has been affected.

Examiner Bennett: Overruled. You may answer.

Mr. Albert: Exception.

A. Yes, we have.

Q. What study did you make? A. We have made a study of comparative volume for a group of departments as a whole, and we have made various price line studies comparing volume at various price lines during the period since the red carding with the corresponding period a year ago.

6008

*By Mr. Martin.*

Q. Has the red carding of Hudson & Company had any effect on its business? A. Yes.

Q. Now, in the light of your answer, and in the light of your previous answers that you have made a study, will you tell me what has been the effect on Hudson's business of the inability to obtain garments from Fashion Originators Guild manufacturers as you observed it?

Mr. Albert: I renew my objection, if it please the Court, on the ground that there was no foundation laid showing that this witness has made any study. There is no foundation laid showing what study has been made, nor has any evidence been presented showing that any reports of any studies have been made by this witness.

6009

Examiner Bennett: Overruled. You may answer.

Mr. Albert: Exception.

*By Mr. Martin.*

Q. Go ahead, Mr. Sappington. You may answer. A. Could I have the question repeated?

6010

*Louis B. Sappington—For. Commission—Direct.*

Q. (Question read.) A. We have been unable during this spring season to obtain certain types of garments in order to complete our assortments or in order to make our assortments up to our standard. We have been unable to supply certain—to obtain certain types of garments, and we have been unable to obtain garments in certain price lines.

Q. Any other effect? A. We have been forced to seek new resources which heretofore were unfamiliar and untried, as far as we are concerned, which involves considerable risk, we felt.

6011

Q. Any other effect? A. We believe that all of this has an effect on the volume of business we were able to do this spring.

Q. Has it had any effect on your—

Mr. Albert: Now, if it please the Court, I move that the answer be stricken on the ground that it is not responsive. The answer to the question was a simple one, "Yes, it affected our volume." Instead of that, we get a long explanation from the witness as to what his opinion is, without any basis or foundation in fact showing the justice of the facts upon which the opinion is predicated.

Examiner Bennett: Denied.

Mr. Albert: Exception.

6012

*By Mr. Martin.*

Q. Did this inability to secure F.O.G.A. garments have any effect on your business so far as the good will of your customers is concerned?

Mr. Albert: If it please the Court, I object to the question on the grounds that the previous answer of the witness did not restrict his inability to obtain certain merchandise as having been confined to

*Louis B. Sappington—For Commission—Direct.*

6013

Guild houses. Mr. Martin in interpreting the witness has included something in his question which was not contained in the answer.

Examiner Bennett: Overruled. You may answer.

*By Mr. Martin.*

Q. Answer. A. Yes, we think it did.

Q. What effect?

Mr. Albert: Exception.

A. Well, in the case of certain—in certain instances where our customers wished to have a special order of garment that we had in stock, which we could not do. Some of these customers were very important to our business.

6014

Q. Have you been enabled to display and offer for sale goods of the comparable grade and quality with which you formerly carried in stock?

Mr. Albert: That is objected to as a conclusion of the witness, if it please the Court; no proper foundation has been laid as to what is a garment comparable to any other garment. There is nothing whatsoever in the record to support any conclusion or any opinion or any wild guess that the witness may make in answer to that question of the Commission's Attorney. I respectfully object to the question upon that ground.

6015

Examiner Bennett: Overruled. You may answer.

Mr. Albert: Exception.

*By Mr. Martin.*

Q. You may answer. A. We were not able to maintain the assortments, our assortments in certain respects as we had maintained them in previous seasons, or as we have maintained them had we had free access to the entire market.

6016

*Louis B. Sappington—For Commission—Direct.*

Mr. Albert: I ask that the latter part be stricken out as purely a conjecture of the witness, if the Court please, "as we would have."

Examiner Bennett: Well, I will let it stand.

Mr. Albert: Exception. May I have the answer repeated?

(Answer read.)

*By Mr. Martin.*

Q. Now, Mr. Sappington, you have referred in your testimony, or, rather, you have described the various departments of your dress business, dress and coat business, by name as well as by departments; have you, in the ordinary course of business, in the performance of your duty, made, or caused to be made, any study with reference to those particular departments which you have outlined, as to the effect on those departments of being red carded? A. Yes, I have.

Your Honor, may I add to my testimony of this morning? In giving a list of the departments in the Ready-to-Wear Division, I left out one department.

Examiner Bennett: All right, you may add it.

The Witness: No. 386—the name is "Home Frocks."

Mr. Feldman: How do you spell that?

Mr. Martin: Frocks, F-r-o-c-k-s.

6018

Mr. Post: You should know after this trip.

*By Mr. Martin.*

Q. Now, with particular reference to those various departments, which one of them was most affected by being red carded?

Mr. Albert: If it please the Court, we would seem to have a principal thought to be established by the



attorney for the Commission, that merely from the fact that he asked the witness whether he had made a study of it, and the witness says "Yes," that that makes him thoroughly competent to tell us what he finds.

Mr. Martin: All right, I will ask him another question if you want me to.

Mr. Albert: You knew what was coming. Let us have a foundation for it.

*By Mr. Martin.*

Q. Have you determined from your study which one of the departments was affected?

6020

Mr. Albert: That certainly cures it! I think the death is worse than the cure. If it please the Court, before we get an opinion from this witness as to what he believes to be the effect, I would like to know what his study was. I do not want to hear that he read a Detroit "Journal" or that he read the "Readers Digest."

Examiner Bennett: You may have the cross-examination.

Mr. Albert: But, if your Honor please—

Examiner Bennett: I have ruled.

Mr. Albert: I object.

Examiner Bennett: I have that, and I have ruled.

Mr. Albert: Exception.

6021

The Witness: May I have the question?

(Question read.)

A. Yes, we have.

*By Mr. Martin.*

Q. Now, which one of those departments was affected?

A. Departments 312, 338, 346, 358, 359, 367, 369, 371, 385.

6022

*Louis B. Sappington—For Commission—Direct.*

Mr. Albert: Will the reporter please repeat those?  
(Answer read.)

(A paper was thereupon marked for identification Commission's Exhibit 481.)

*By Mr. Martin.*

Q. I hand you Commission's Exhibit 481 for Identification, and ask can you identify that paper? A. Yes.

Q. What is it? A. This is a memorandum sent to me by Mr. Touff, buyer for Department 338, giving an analysis—

6023

Mr. Albert: Wait. If it please the Court, I ask that it be not described.

Mr. Martin: All right.

Examiner Bennett: It may not.

*By Mr. Martin.*

Q. Was this memorandum prepared for you at your request? A. Yes, sir.

Q. It was done in the ordinary course of business? A. Yes, sir.

Q. And in the ordinary course of business is relied on by you? A. Yes, sir.

Q. To the best of your knowledge and belief, this is correct? A. Yes, sir.

6024

Examiner Bennett: Who is the gentleman that prepared it?

Mr. Martin: Mr. Touff, who is one of their buyers, T-o-u-f-f..

Examiner Bennett: All right.

Mr. Martin: I offer this in evidence as Commission's Exhibit 481.

Mr. Albert: Is this another exhibit being offered in evidence, Mr. Martin?

Mr. Martin: It is; yes, sir.

Mr. Albert: I object to the particular figures going into evidence upon the ground that no proper foundation has been laid.

Examiner Bennett: Received.

Mr. Albert: Exception.

(Paper referred to, heretofore marked for identification Commission's Exhibit 481, was marked as an exhibit and received in evidence.)

(A paper was marked for identification Commission's Exhibit 482-A and 482-B.)

*By Mr. Martin:*

6026

Q. I hand you Commission's Exhibits 482-A and 482-B for Identification, and ask you if you can identify those?

A. Yes, sir.

Q. What are they? A. Memorandum from Mr. Touff to myself.

Q. Was that prepared for you at your request? A. Yes, sir.

Q. In the ordinary course of business? A. Yes, sir.

Q. And as such relied upon by you in the ordinary course of business? A. Yes, sir.

Q. And, to the best of your knowledge and belief, those figures are accurate and correct? A. Yes, sir.

Mr. Martin: I offer this in evidence, your Honor, as Commission's Exhibits 482-A and 482-B.

6027

Mr. Albert: Now, if it please the Court, I wish to object to Commission's Exhibit 482, particularly that portion which contains a record of figures, on the ground that no proper foundation has been laid demonstrating by competent evidence the method in which the figures were reached and the accuracy thereof. I also object to the further admission of

6028

*Louis B. Sappington—For Commission—Direct.*

Commission's Exhibits 482-A and B upon the ground that it contains self-serving declarations in no way binding upon the respondents. It contains interoffice communications as between Mr. Sappington and Mr. Touff, one of his buyers, with respect to opinions of Mr. Touff on matters that are before the Commission, and that to permit the introduction into evidence of this exhibit will forestall any cross-examination by the respondent with respect to the self-serving declarations, opinions, hearsay matters, and the wild guesses of Mr. Touff in which he was making his alleged report to Mr. Sappington.

6029

Examiner Bennett: I do not believe I can accept that, Mr. Martin.

Mr. Martin: Sir?

Examiner Bennett: I do not believe I can accept that. There is a wrong argument there. I don't mind the figures. I will admit the figures if you will cut the rest out. There is a long argument there by a man that is not subject to cross-examination, and I think it is going too far.

Mr. Martin: Well, will your Honor admit it as far as the figures are concerned?

Examiner Bennett: Yes, I will admit the figures and you can draw your own conclusions.

Mr. Martin: All right, sir. I offer it with that.

6030

Mr. Albert: Now, if it please the Court, in the light of the analysis, so-called analysis of the figures that is revealed in the opinions of Mr. Touff, which are subjoined to the figures—

Examiner Bennett: Yes.

Mr. Martin: We will tear them off from there right now.

Mr. Feldman: No, don't.

Mr. Albert: Don't destroy the Commission's exhibit.

Mr. Martin: I don't mean tear them up. I mean separate them, because the Examiner is admitting part and he is not admitting the other part.

Mr. Albert: I ask that the figures contained on Commission's Exhibit 482-A not be admitted in evidence in addition to the grounds which I have urged.

Examiner Bennett: I will overrule you as to the figures and admit the figures. I shall not admit those arguments.

Mr. Martin: Now, is it satisfactory to you—this part of the exhibit, Exhibit 482-B does not contain any figures—is it satisfactory to remove that from the exhibit?

6032

Mr. Albert: It is satisfactory to me to remove it from the exhibit provided the Commission makes Commission's Exhibits 482-A and 482-B, in so far as it contains an alleged interoffice communication available to me.

Mr. Martin: It is immaterial to me whether it is removed or not. We will just let it go, in like that, on that basis.

Mr. Feldman: May I see it just a moment?

Mr. Albert: Just a minute.

Mr. Martin: I understand that the exhibit is admitted as far as the figures are concerned; is that correct, your Honor?

6033

Examiner Bennett: Yes.

Mr. Albert: And no further.

Examiner Bennett: No further.

Mr. Albert: Further information contained on the exhibit to be deemed in evidence?

Examiner Bennett: No.

Mr. Martin: That is perfectly satisfactory to me.

6034

*Louis B. Sappington—For Commission—Direct.*

Examiner Bennett: You may draw your own conclusions as to that.

Mr. Albert: If your Honor pleases, as I understand it, we have two papers here marked for identification, Commission's Exhibit 482-A and Commission's Exhibit 482-B.

Examiner Bennett: The figures tabulated at the head of the document.

Mr. Albert: On Commission's Exhibit 482-A.

Examiner Bennett: Yes.

Mr. Albert: And so much thereof is going into evidence and the remainder of the paper can still be referred to as Commission's Exhibits 482-A and 482-B for Identification.

6035

Examiner Bennett: Yes.

Mr. Feldman: Not to be destroyed.

Examiner Bennett: Yes.

Mr. Martin: Perfectly satisfactory with me.

(The documents referred to, heretofore marked for identification Commission's Exhibits 482-A and 482-B, were marked as exhibits and received in evidence.)

Mr. Martin: Will you mark this the next number, please?

(Documents were marked for identification Commission's Exhibits 483-A and 483-B.)

6036

*By Mr. Martin.*

Q. Now, I hand you Commission's Exhibits 483-A and B for Identification, and ask, can you identify that paper?

A. Yes, sir.

Q. What is it? A. It is a memorandum to me from Mr. Dunham.

Q. Mr. who? A. Mr. Dunham.



Q. Who is Mr. Dunham? A. He is one of the assistants—assistant merchandise managers in the garment division. I gave you his name this morning.

Q. Was that prepared for you at your request in the ordinary course of business? A. Yes, sir.

Q. Is it relied and acted on by you in the ordinary course of business? A. Yes, sir.

Q. To the best of your knowledge and belief, it is a true and accurate statement? A. Yes, sir.

Mr. Martin: I offer this in evidence, your Honor.

Mr. Albert: Objected to, if it please the Court, upon the grounds previously urged with respect to Commission's Exhibits 481 and 482.

6038

Examiner Bennett: Mr. Martin, do you want to strike out this paragraph (indicating)?

Mr. Martin: All right, sir.

Examiner Bennett: If you do, why, it may go in evidence.

Mr. Martin: This is offered in evidence as Commission's Exhibit 483-A, with the understanding that the paragraph in single space just below the figures at the top of the page, and which have pencil brackets around them, are not to be taken as part of the exhibit, and I now offer it in evidence.

Mr. Albert: Which one is that?

Examiner Bennett: Merely commentary.

Mr. Albert: I wanted to check up on that. Exception.

6039

Examiner Bennett: All right.

*By Mr. Martin.*

Q. Now, Mr. Sappington, have you had any figures prepared for you at your request, or have you personally prepared any figures showing the net piece sales for the year 1935? A. Yes, sir.

6040 *Louis B. Sappington—For Commission—Direct.*

(Documents referred to, heretofore marked for identification Commission's Exhibits 483-A and 483-B, were marked as exhibits and received in evidence.)

Mr. Albert: If I am not too inquisitive, may I ask what piece sales, of what department?

(A document was marked for identification Commission's Exhibit 484.)

*By Mr. Martin.*

Q. I hand you, for identification, Commission's Exhibit 484, and ask can you identify that paper? A. Yes, sir.

6041 Q. What is it? A. Net piece sales of dresses by departments for the year 1935.

Mr. Albert: Thank you, Mr. Sappington.

Mr. Martin: I offer that in evidence, Commission's Exhibit 484.

Mr. Albert: May I ask a question in voir dire, if it please the Court?

Examiner Bennett: All right.

*By Mr. Albert.*

Q. Does this constitute all of your ready-to-wear dress departments in 1935? A. Let me see it.

Mr. Martin: Let him see the exhibit.

6042 A. All ready-to-wear dress departments.

*By Mr. Albert.*

Q. That is, there were no other dress departments in 1935, as I understand? A. In the store?

Q. Yes. A. Yes.

Q. Why do you say "in the store"? A. Because there are departments in the store that are not in what we con-

sider the ready-to-wear division; our house dress department, for example.

Q. You mean by that the home frocks? A. No, that is a separate department; I mean house dresses.

Q. Then in so far as all departments you have been referring to thus far are concerned, house dresses have not been included? A. That is right.

Mr. Albert: I renew my objection, if it please the Court, on the ground that no proper foundation has been laid.

Examiner Bennett: I do not see its relevancy. Can you indicate the relevancy of it?

Mr. Martin: Yes, I am going to hook it up to show a comparison of what has taken place prior to being red carded and after being red carded. 6044

Examiner Bennett: That is part of the offer?

Mr. Martin: Yes, sir.

Examiner Bennett: All right; received.

(Document referred to, heretofore marked for identification Commission's Exhibit 484, was marked as an exhibit and received in evidence.)

*By Mr. Martin.*

Q. With reference to this Commission's Exhibit 484, I notice it is marked for the year 1935. You have previously testified that your fiscal year runs February 1 until January 31. Am I to understand from that that this list refers to the period February 1, 1935, to January 31, 1936? A. Yes, sir. 6045

(A paper was marked for identification Commission's Exhibit 485.)

*By Mr. Martin.*

Q. I hand you Commission's Exhibit 485 for Identification and ask can you identify that paper? A. Yes, sir.

6046.

*Louis B. Sappington—For Commission—Direct.*

Q. What is it? A. It is a comparative study of business in the departments which I just enumerated as affected by the Guild for the months of February, March, April, May, and June and July, 1935, against 1936.

Q. Was that prepared by you? A. No, sir.

Q. Was it prepared by your subordinates or employees for you at your request? A. Yes, sir.

Q. In the usual course of business? A. Yes, sir.

Q. And as such is acted upon and relied upon by you? A. Yes, sir.

Q. To the best of your knowledge and belief, is that a correct statement? A. Yes, sir.

6047

Q. And is relied upon by you in the ordinary course of business as being correct? A. That is right.

Mr. Martin: I offer this in evidence, your Honor, as Commission's Exhibit 485.

*By Mr. Albert.*

Q. Mr. Sappington, does Commission's Exhibit 485 represent the percentage in increase or decrease in the dollar volume of the departments therein mentioned? A. Yes, sir.

Q. You are quite certain of that? A. Yes, sir.

Q. And this is accurate? A. Yes, sir.

Q. Taken from the reports of J. L. Hudson Company? A. Yes, sir.

6048

Mr. Albert: I object to it, if it please the Court, on the ground that no proper foundation has been laid.

Examiner Bennett: Overruled.

Mr. Albert: Exception. That is Commission's Exhibit 485?

Mr. Martin: 485 is correct.

(Document referred to, heretofore marked for identification Commission's Exhibit 485, was marked as an exhibit and received in evidence.)

*By Mr. Martin.*

Q. Now, Mr. Sappington, with reference to Commission's Exhibits 480-A to D, which is a letter from Mr. Maurice Rentner, together with an enclosure therewith, did you have any communication, or did you receive any communication from Mr. Bergdahl with reference to that letter?

Mr. Albert: Just a moment, if it please the Court. I object to any such testimony at the present time, on the ground that it is immaterial and not binding upon the respondents herein, and certainly is inadmissible unless some connection is shown between Mr. Bergdahl and J. L. Hudson & Company. We have had no testimony thus far from this witness as to who the estimable Mr. Bergdahl is.

6050

Examiner Bennett: I think you should identify him.

*By Mr. Martin.*

Q. Do you know Mr. Bergdahl? A. Yes, sir.

Q. Who is he? A. Mr. Bergdahl is Mr. Reilly's assistant in our New York office.

Q. Now, I renew my question—did you have any communications—

Examiner Bennett: Who is Mr. Reilly?

6051

Mr. Martin: He said Mr. Reilly's assistant in his New York office.

The Witness: I mean in the office of the A.M.C.

*By Mr. Martin.*

Q. Well, I will ask the question: Is the J. L. Hudson Company affiliated with the Associated Merchandising Corporation? A. Yes, sir.

6052

*Louis B. Sappington—For Commission—Direct.*

Q. Did you have any communication from Mr. Bergdahl relative to Mr. Rentner's letter which is in evidence as Commission's Exhibits 480-A to D? A. Yes, sir.

Q. Did you get a letter from him, or telegram, or what? A. Telegram.

Q. Have you the telegram with you? A. Yes, I think so.

(A paper was marked for identification Commission's Exhibit 486.)

Q. I hand you Commission's Exhibit 486 for Identification, and ask can you identify that letter? A. Yes.

6053

Q. What is it? A. A telegram from Mr. Bergdahl to myself.

Mr. Martin: I offer the same in evidence as Commission's Exhibit 486.

Mr. Albert: May I inquire voir dire, if it please the Court, with respect to this exhibit?

Examiner Bennett: All right.

*By Mr. Albert.*

Q. What is the connection, Mr. Sappington, between J. L. Hudson Company and the A.M.C.?

Mr. Martin: Objected to as being immaterial. He has testified that they were affiliated.

6054

*By Mr. Albert.*

Q. I would like to know what you mean by "they are affiliated." Your store may be affiliated with a great number of different organizations and have no bearing or relevancy in this proceeding as regards this telegram. What is the affiliation of J. L. Hudson & Company with the A.M.C.?



Mr. Martin: The same objection.

Examiner Bennett: I will let him answer.

Mr. Martin: All right, sir. Go ahead.

A. We are a member of the A.M.C.

*By Mr. Albert.*

Q. What do you mean by "you are a member of the A.M.C."? What is the A.M.C.? You see, we don't know what the A.M.C. is. A. It is an association of stores.

Q. Yes. A. Of the Associated Merchandising Corporation.

Q. Yes. A. Associations of stores in this country for the purpose of buying merchandise, doing work in the New York market.

Q. Well, has the A.M.C. any control or any influence in your buying?

Mr. Martin: Objected to now, your Honor. I think he has sufficiently identified who the A.M.C. was and the connection between the two.

Examiner Bennett: Sustained.

Mr. Albert: If your Honor please, it may be an association of stores for—

Mr. Martin: It is sustained.

Mr. Albert: —for the support of the Olympic Games or something.

Examiner Bennett: He said for the purpose of buying. I think we have gone far enough on the voir dire.

Mr. Albert: Very well, your Honor.

Examiner Bennett: I sustain the objection.

Mr. Albert: I object to the introduction of Commission's Exhibit 486 upon the ground that no proper foundation has been laid with respect thereto, and there has been no sufficient explanation

6058

*Louis B. Sappington—For Commission—Direct.*

given of the relationship between J. L. Hudson Company and Mr. Bergdahl and Mr. Merriam of the A.M.C. What do those initials stand for, Mr. Martin?

Mr. Martin: You ought to know by now?

Examiner Bennett: It is in the record rather elaborately.

Mr. Albert: May I point out to your Honor that Mr. Martin has at various times objected to any questions about this A.M.C. upon the ground that there was nothing in the record with respect thereto.

6059

Mr. Martin: May Mr. Martin point out to your Honor that he has already advised Mr. Albert on numerous occasions that he would conduct his case as he saw fit and not as Mr. Albert saw fit.

Mr. Albert: Well, that is just the point. I object to the fitness of the conduct of the case.

Examiner Bennett: All right. Overruled.

Mr. Albert: Exception.

Examiner Bennett: Received.

(Document referred to, heretofore marked for identification Commission's Exhibit 486, was marked as an exhibit and received in evidence.)

Examiner Bennett: We will have a recess of ten minutes.

6060

(There was a short recess taken.)

Examiner Bennett: Be in order, please. You may proceed.

*By Mr. Martin.*

Q. Now, Mr. Sappington, did you ever have any correspondence with the Fashion Originators Guild relative to styles which had been adjudged copies, and to the efforts, if any, being made by the F.O.G.A. to prevent these styles

being shown by stores which were not members of the F.O.G.A.?

Mr. Albert: Object to the form of the question, if it please the Court. There are two questions there, and it also includes a state of facts not in evidence.

Examiner Bennett: Yes. Make two separate questions of it, please. Get an answer to the first question.

Mr. Martin: Answer that first part.

The Witness: What is the first part, please?

(Question read as follows: "Q. Mr. Sappington, did you ever have any correspondence with the Fashion Originators Guild relative to styles which had been adjudged copies?") 6062

A. Yes.

Mr. Martin: Now repeat the second part of the question.

(Question read as follows: "Q. And to the efforts, if any, being made by the F.O.G.A. to prevent these styles being shown by stores which were not members of the F.O.G.A.?" )

A. Yes.

Mr. Martin: Mark that, please, sir.

(A document was marked for identification Commission's Exhibit 487.) 6063

*By Mr. Martin.*

Q. I hand you Commission's Exhibit 487 for Identification, and ask you if you can identify that? A. A letter from myself to Mr. Jack Goldston.

6064

*Louis B. Sappington—For Commission—Direct.*

Q. What is the date of it? A. January 31, 1935.

Mr. Martin: I offer that in evidence.

Mr. Albert: No objection.

Examiner Bennett: Received.

(Document referred to, heretofore marked for identification Commission's Exhibit 487, was marked as an exhibit and received in evidence.)

*By Mr. Martin.*

6065 Q. With reference to Commission's Exhibit 487, which is a letter from you to Mr. Jack Goldston of the Fashion Originators' Guild of America, did you receive any reply thereto? A. Yes, sir.

Q. Have you that letter with you? A. Yes, sir.

(Letter was produced by the witness.)

Mr. Martin: Mark that for identification, if you please, sir.

(Letter was marked for identification Commission's Exhibits 488-A and 488-B.)

*By Mr. Martin.*

Q. I hand you Commission's Exhibits 488-A and 488-B—

Mr. Albert: It will save time if you will let me see it.

6066

No objection, if it please the Court.

Mr. Martin: I offer this in evidence as Commission's Exhibits 488-A and B.

Examiner Bennett: Received.

(Letter referred to, heretofore marked for identification Commission's Exhibits 488-A and 488-B, were marked as exhibits and received in evidence.)

*Louis B. Sappington—For Commission—Direct.*

6067

Mr. Martin: The same being a letter from Albert N. Post to L. B. Sappington, dated February 4, 1935.

*By Mr. Martin:*

Q. Now, Mr. Sappington, do you know Mr. Albert Post of the Fashion Originators Guild? A. Yes, sir.

Q. Did you have any correspondence or conversation with him in May of 1935? A. Yes, sir.

Q. Do you recall what the subject of that conversation was? A. Yes, sir.

Q. What was it? A. Relative to the \$10.75 houses joining the Guild.

6068

Q. Now, did you have any correspondence with Mr. Bergdahl relative to the same subject? A. Yes, sir.

(A paper was marked for identification Commission's Exhibit 489.)

*By Mr. Martin:*

Q. I hand you Commission's Exhibit 489 for identification, and ask can you identify that? A. Yes, sir.

Q. What is it? A. A copy of telegram from myself to Mr. Bergdahl, May 8, 1935.

Mr. Albert: This is objected to, if it please the Court, as not binding upon the respondents; self-serving declaration.

6069

Examiner Bennett: This is a part of a chain, is it?

Mr. Martin: Yes, sir.

Examiner Bennett: All right, I will receive it as such. I will expect supporting documents to show its relevancy.

Mr. Albert: Exception.

6070

*Louis B. Sappington—For Commission—Direct.*

(Telegram referred to was marked for identification Commission's Exhibit 489 and received in evidence.)

*By Mr. Martin.*

Q. Now, did you receive a reply to that telegram? A. Yes, sir.

Q. Have you the same with you? A. Yes, sir.

Q. Will you produce it, please?

(Witness produces paper.)

(A paper was marked for identification Commission's Exhibit 490.)

6071

*By Mr. Martin.*

Q. I hand you Commission's Exhibit 490 for Identification, and ask can you identify the same? A. Yes, sir.

Q. What is it? A. It is a telegram from Mr. Bergdahl to myself.

Mr. Albert: Same objection, if it please the Court.

Mr. Martin: I offer this in evidence, Commission's Exhibit 490.

Examiner Bennett: Received.

Mr. Albert: Exception.

6072

(Telegram referred to, heretofore marked for identification Commission's Exhibit 490, was marked as an exhibit and received in evidence.)

*By Mr. Martin.*

Q. Now, did you make any reply to Mr. Bergdahl? A. Yes, sir.

Q. Have you your reply with you? A. Yes, sir.

Q. Will you produce it?



*Louis B. Sappington—For Commission—Direct.*

6073

(Witness produces paper.)

(Papers were marked for identification Commission's Exhibits 491-A and 491-B.)

Q. I hand you Commission's Exhibits 491-A and B for identification, and ask can you identify it? A. Yes, sir.

Q. What is it? A. A copy of a letter written by myself to Mr. Bergdahl, May 9, 1935.

Mr. Martin: I offer the same in evidence, Commission's Exhibits 491-A and B, without the pencil notations on the top there; I will rub that out.

Mr. Albert: No objection, your Honor.

Examiner Bennett: Received.

6074

(Letter referred to, heretofore marked for identification Commission's Exhibits 491-A and 491-B, were marked as exhibits and received in evidence.)

*By Mr. Martin.*

Q. Do you recall, Mr. Sappington, whether or not there was a meeting held in your offices between representatives of your company and the Fashion Originators' Guild at any time in the fall of 1935? A. Yes, sir.

Q. When was that meeting held; do you recall? A. About the middle of November.

Q. Did your company ever receive any communication from the Fashion Originators' Guild relative to that meeting? A. Yes, sir.

6075

Q. Have you the letter? A. Yes, sir.

Q. Will you produce it?

Mr. Martin: Mark this the next exhibit, please, sir.

(Document was marked for identification Commission's Exhibits 492-A, 492-B and 492-C.)

6076

*Louis B. Sappington—For Commission—Direct.**By Mr. Martin.*

Q. I hand you Commission's Exhibits 492-A, B and C for Identification.

Mr. Albert: Let me see it. We might save time. No objection.

Mr. Martin: I offer into evidence Commission's Exhibits 492-A, B, C, the same being a letter from Albert M. Post to Michael F. Dowley of the Hudson Company, under date of November 18, 1935.

Examiner Bennett: Received.

6077

(Document referred to, heretofore marked for identification Commission's Exhibits 492-A, 492-B and 492-C, were marked as exhibits and received in evidence.)

*By Mr. Martin.*

Q. Was any record of the meeting held in your office on November 16, 1935, which has just been referred to, made by any member of your organization? A. Yes, sir.

Q. Have you a copy of the record? A. Yes, sir.

Mr. Martin: Mark this for identification.

(Document was marked for identification Commission's Exhibits 493-A and 493-B.)

6078

Mr. Martin: That is 493-A and B.

Mr. Martin: Commission's Exhibits 493-A and B.

*By Mr. Martin.*

Q. Do you recall, Mr. Sappington, whether or not there was any conference between officials of your store and Mr. Post of the F.O.G.A. in the fall of 1935 with reference to co-operation on the part of your store? A. Yes, sir.

Q. Do you recall when that meeting took place? A. There was a meeting December 5, 1935.

*Louis B. Sappington—For Commission—Direct.*

6079

Q. Did you have any correspondence with your New York representative relative to that meeting? A. We had some correspondence with Mr. Bergdahl.

Q. Have you that letter available? A. Yes, sir.

(Paper was marked for identification Commission's Exhibits 494-A and 494-B.)

*By Mr. Martin.*

Q. I hand you Commission's Exhibits 494-A and 494-B, and ask can you identify the same? A. Yes, sir.

Q. What is it? A. A copy of a letter from Mr. Oscar Webber to Mr. Bergdahl, dated December 5.

Q. Who is Mr. Oscar Webber? A. Vice-president and general manager of the J. L. Hudson Company.

6080

Mr. Albert: This is offered as a letter from Mr. Bergdahl to Mr. Webber of J. L. Hudson Company, having been sent on December 5, 1935, Mr. Martin?

Mr. Martin: Yes.

Mr. Albert: Not the slightest objection.

Mr. Martin: O.K., I did not think you would.

Examiner Bennett: Received.

(Letter referred to, heretofore marked for identification Commission's Exhibits 494-A and 494-B, were marked as exhibits and received in evidence.)

*By Mr. Martin.*

6081

Q. Now, Mr. Sappington, you have testified that from time to time the Guild shopper appeared in your store and directed you to return garments which were found in your store and had been adjudged to be copies of styles registered with the Fashion Originators Guild of America.

Mr. Albert: Would you be good enough to read that back to me?

6082

*Louis B. Sappington—For Commission—Direct.*

(Question read.)

Mr. Martin: How did she give these instructions? Were they written or verbal?

The Witness: Sometimes written, sometimes verbal.

*By Mr. Martin.*

Q. Did she ever give you any—withdraw the question. Have you with you a copy of a written instruction? A. Yes, sir.

Q. Will you produce the same?

6083

(A document was marked for identification Commission's Exhibit 495.)

Mr. Albert: No objection.

Examiner Bennett: Received.

Mr. Martin: I offer this in evidence as Commission's Exhibit 495.

Examiner Bennett: Received.

(Document referred to, heretofore marked for identification Commission's Exhibit 495, was marked as an exhibit and received in evidence.)

Mr. Martin: Now, if your Honor please, the hour of 4.30 having arrived and I having quite a good bit more of testimony with this witness, I suggest that this is a good stopping point.

6084

Examiner Bennett: Well, let's put it over until Monday.

Mr. Martin: Until when?

Mr. Albert: Monday, your Honor?

Examiner Bennett: Monday morning.

Mr. Martin: At 10 o'clock?

Examiner Bennett: At 10 o'clock.

(Whereupon, at 4.30 o'clock P. M., August 14, 1936, the hearing in the above-entitled matter was adjourned.)

*Garfield R. MacDonald—For Commission—Direct.*

6085

Court Room No. 722,  
Federal Building,  
Detroit, Michigan,  
August 17, 1936.

Met. pursuant to adjournment, 10 A. M.

Before: JOHN W. BENNETT, Examiner.

(Same Appearances.)

PROCEEDINGS.

Examiner Bennett: Be in order, please.

Mr. Martin: If your Honor please, at this time Mr. Sappington has not shown up and I am going to ask Mr. MacDonald to come around just a few moments and be sworn. I want to ask just a few questions of him.

Examiner Bennett: Be sworn, please.

GARFIELD R. MACDONALD was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Examiner Bennett: What is the first name?

The Witness: Garfield.

*Direct examination by Mr. Martin.*

Q. State your name. A. Garfield R. MacDonald.

Q. Where do you live, Mr. MacDonald? A. 640 Washington Road, Grosse Point.

Q. What is your occupation? A. Ready-to-wear merchandise manager in Hudson's Basement Store.

Q. How long have you been employed by Hudson Company? A. Twelve and a half years.

6086  
6087

6088

*Garfield R. MacDonald—For Commission—Direct.*

Q. How long have you held your present position? A. Three and a half years.

Q. Did you attend a meeting in Mr. Dowley's office on November 16, 1935, at which meeting Mr. Dowley, certain other representatives of Hudson's Store and Mr. Goldston of the F.O.G.A. were present? A. I did.

Q. Just tell us what happened at that meeting. A. An agreement was reached in the meeting that in case of a garment selected from our stock by the Guild shopper with the request that we return it, if we so desired we had the privilege of shopping the town, and if we found the garment selling in our competitors' stores we were to call the shopper, showing her the condition; she had the privilege of re-shopping and finding the condition as we represented it, we were to be allowed to continue selling the garment.

6089

Q. Now, pending this period of shopping, what was to be done with the garment in question? A. It was to remain on the floor.

Q. Did you enter into any agreement not to re-order the particular dress in question?

Mr. Albert: That is objected to, if it please the Court, as leading.

Examiner Bennett: Well, if you can get the witness to tell what further occurred, why, it would be more satisfactory.

6090

Mr. Albert: I doubt whether he can do it without leading.

*By Mr. Martin.*

Q. What else happened at that meeting? Was any further agreement entered into? A. No further agreement was entered into, to my knowledge.

Q. Now, what did you do after that meeting, Mr. MacDonald? A. I left the office of Mr. Dowley, took the elevator to the main floor to return to my own office.



*Garfield R. MacDonald—For Commission—Direct.*

6091

Q. Were you by yourself or did somebody go with you?

A. I was alone.

Q. What happened then? A. As I got off the elevator on the main floor of the former building, I met Mr. Goldston and Mrs. Miller, the Guild shopper.

Q. Who is Mr. Goldston? A. F.O.G.A. representative that attended the meeting in Mr. Dowley's office.

Q. All right, sir, what happened then? A. I stopped, and in my presence Mr. Goldston verbally gave his shopper the same instructions as I have related as being the agreement, adding she was to report all such instances to the Guild.

Mr. Martin: That is all.

6092

Mr. Albert: May we have Commission's Exhibit 5, Mr. Martin? It is not in evidence.

Mr. Martin: I have not—let me see. I do not think I have that.

Mr. Haycraft: Here it is.

Mr. Martin: Here it is.

Mr. Albert: If it please the Court, may I have Commission's Exhibit 493-A?

Mr. Haycraft: It is not offered.

Mr. Martin: These are not offered in evidence yet.

Mr. Albert: That is quite true. I know all about it.

Mr. Haycraft: This witness has not seen it.

Mr. Albert: Maybe I want to offer them, Mr. Martin.

6093

Examiner Bennett: It was marked?

Mr. Albert: Now, your Honor please, I notice that Mr. Sappington has come in, and rather than interfere with the due course of the proceedings and to have the respondents' position in any way prejudiced by the fact that cross-examination has commenced with Mr. MacDonald before cross-exam-

6094

*Garfield R. MacDonald—For Commission—Direct.*

ination is commenced with Mr. Sappington, I respectfully request that the Commission proceed with Mr. Sappington and that Mr. MacDonald be brought back for cross-examination after Mr. Sappington's cross-examination has been concluded. I do not think that there is very much harm to the witness. He is here in Detroit, and he certainly can come back again after Mr. Sappington has concluded.

Mr. Martin? If your Honor please, Mr. MacDonald was put on at this time for a very specific reason. He is going out of town. He was only asked relative to one instance here, and there certainly cannot be any exhaustive cross-examination of this witness on what he has just testified to—

Mr. Albert: In the first place—

Mr. Martin: Just a moment, please, sir.

Mr. Albert: I am sorry.

Mr. Martin: And, as I said, this witness is anxious to get away from town, and I respectfully request that such cross-examination as counsel for the respondent wishes to make with this witness be had at this time.

Mr. Albert: In the first place—

Examiner Bennett: When does he expect to be back?

Mr. Albert: Your Honor—

Examiner Bennett: I say, when does the witness expect to be back?

Mr. Martin: My understanding is—I thought he was going to be away all week. I do not know. You can ask the witness, your Honor, when.

Mr. Albert: In the first place, your Honor—

Examiner Bennett: Just a moment. I want to get that from the witness.

Mr. Martin: Mr. MacDonald, when did you expect to be back?

6095

6096

The Witness: I am planning on being back Friday morning, although it is not definite; otherwise, it will be Saturday morning.

Mr. Martin: Friday morning he expects, though he says it is not definite, and he may not get back until Saturday morning.

Examiner Bennett: I see.

Mr. Albert: Your Honor, please—

Examiner Bennett: Very well; go ahead and make your statement.

Mr. Albert: As far as the witness being out of town is concerned, every witness prior to cross-examination has stated that he is preparing to leave town—

6098

Mr. Martin: This does not seem to be just prior to cross-examination.

Mr. Albert: Will you let me complete my statement, Mr. Martin?

Mr. Martin: Certainly.

Mr. Albert: Thank you.

Mr. Martin: You are welcome.

Mr. Albert: Secondly, we now learn the witness is going out of town. Mr. Martin, very naively, when he put the witness on the stand, made the statement that Mr. Sappington had not come in, and to save time he was going to put Mr. MacDonald on the stand.

In the third place, Mr. Martin obviously forgets a great deal of information that Mr. Sappington gave us about certain connections with Mr. MacDonald with certain affairs of the Fashion Originals Guild and J. L. Hudson Company, about which Mr. Sappington is going to be put through a very rigid cross-examination, and about which I frankly reveal that I do not wish to give him any warning by having to cross-examine Mr. Mac-

6099

6100 — *Garfield R. MacDonald—For Commission—Direct.*

Donald first, and I cannot permit Mr. MacDonald to go on the stand and get off the stand without cross-examining about the matter that Mr. Sappington has testified to which concerns Mr. MacDonald.

Examiner Bennett: You cannot cross-examine him about that so you may just as well make up your mind about it. You cross-examine this witness on his testimony here this morning, if you cross-examine, so just go ahead with your cross-examination if you have any.

Mr. Albert: Well, now, if your Honor please—

6101 Examiner Bennett: Well, now, I am through with that. I am not listening to any further—

Mr. Albert: In other words, your Honor insists that I cross-examine Mr. MacDonald now?

Examiner Bennett: Yes, right now, right now, on this testimony this morning.

Mr. Albert: Exception.

Examiner Bennett: All right.

Mr. Albert: May I have Commission's Exhibits 493-A and B?

Mr. Martin: They are not—

Mr. Albert: 493—

Mr. Martin: 493-A or B are not either one in evidence.

6102

Mr. Albert: I did not say that.

Mr. Martin: Give them back, then.

Mr. Albert: You want the Commission's exhibits back? I am sorry, I refuse to give them back to you. I want to use Commission's Exhibits 493-A and B for cross-examination.

Mr. Martin: Your Honor, I respectfully insist that neither 493-A or B are either one in evidence.

Examiner Bennett: Not yet.

Mr. Albert: These are Commission's exhibits, your Honor please.

Examiner Bennett: Not yet, not yet. The exhibits which are marked for identification are still the property and remain in the custody of the persons who have had them marked.

Mr. Albert: Are they not, if it please the Court—

Examiner Bennett: Yes.

Mr. Albert: —in the custody of the Court when they are marked for identification?

Examiner Bennett: No, they are in the custody —no, not under our rules. They are in the custody of the person who offers them.

6104

Mr. Albert: If it please the Court, Commission's Exhibits 493-A and B—

Mr. Martin: Are not in evidence.

Mr. Albert: —have been marked.

Examiner Bennett: As a matter of fact, there are no such documents. They are two documents—

Mr. Albert: Marked for identification.

Examiner Bennett: —marked for identification, right.

Mr. Albert: Have been marked for identification by the Commission; they are intra-office communications of J. L. Hudson Company.

Examiner Bennett: Yes.

Mr. Albert: Which allegedly contain the precise information which this witness has just testified to, and which the Commission could not get into evidence. Now, do I understand that Mr. Martin refuses to permit me to compare this witness' oral testimony with the written instrument that he made in his official capacity as an employee of J. L. Hudson Company?

6105

6106

*G. R. MacDonald—For Commission—Direct—Cross.*

Examiner Bennett: Well, I will see what you are—

Mr. Albert: May I have Commission's Exhibits 493-A and B?

Mr. Martin: You may not. You may when they are in evidence.

Examiner Bennett: Not except they be given to you with the consent of the person in whose custody they belong. I am simply carrying out the rules of the Commission.

Mr. Albert: Do I understand that the Commission is refusing to permit me to cross-examine this man on them?

6107

Examiner Bennett: The rule of the Commission is just as I have stated, and whether you understand it or not, that is what the rule is.

Mr. Martin: Now I ask for the return of those two papers.

Mr. Albert: Mr. Martin—

Examiner Bennett: Please give them up to Mr. Martin.

Mr. Albert: Exception.

*Cross-examination by Mr. Albert.*

6108 Q. Mr. MacDonald, did you make any written report to any executive of J. L. Hudson Company about the matter you have just testified to? A. Yes, I did.

Q. Have you that report here? A. No.

Q. You have not? A. No.

Q. Did you not just hear me discussing it with Mr. Martin? A. Yes.

Q. Is that report not in Mr. Martin's possession at the present time? A. I don't know that it is the report; I did not see it.

Q. You did not see the report that you gave to Mr. Martin? A. Not when you had it.



*Garfield R. MacDonald—For Commission—Cross.*

6109

Q. Did you not discuss that report with Mr. Martin before you came in here this morning? Why do you hesitate? A. I read the report.

Q. I beg your pardon? A. I read the report.

Q. Then Mr. Martin handed it to you? A. No, Mr. Martin did not.

Q. What report did you read this morning? A. My copy.

Q. Your copy of the report that you gave Mr. Martin? A. Right.

Q. So you do know what Mr. Martin has, do you not? A. I know if that is the report, I know what it is.

Q. You did not hand him anything else, did you? A. I didn't hand him that report. 6110

Q. Have you your copy of it here? A. No.

Q. Do you know whether Mr. Martin has his copy? A. I don't know.

Q. I show you Commission's Exhibits 493-A and B and ask you if that is a copy of what you handed Mr. Martin?

Mr. Martin: You mean you want me to show it to him?

Mr. Albert: Will you be good enough to show it to him?

Mr. Martin: Do you mean that you want me to show it to him, or are you going to show it to him?

Mr. Albert: I asked, will you be good enough to show it to him?

(Mr. Martin hands paper to witness.) 6111

A. That is the report.

by Mr. Albert.

Q. You knew what I was referring to all along, didn't you, Mr. MacDonald? A. (No response.)

Mr. Albert: May I have Commission's Exhibits 493-A and B?

6112

*Garfield R. MacDonald—For Commission—Cross.*

Mr. Martin: You may not.

Mr. Albert: How do you know I don't want to put them in evidence?

Mr. Martin: Offer them in evidence.

Mr. Albert: I cannot offer them in evidence until I have seen them.

Mr. Martin: You have seen them.

Mr. Albert: I ask for a ruling of the Court. Here is a report that has been rendered by an employee of J. L. Hudson Company who is on the stand now, who has testified that he has not got his copy of the report. The best evidence, therefore, is the copy that he has given Mr. Martin.

6113

Examiner Bennett: Just a moment. Just a moment. Mr. Martin, did you examine this witness from that report?

Mr. Martin: I did not, sir.

Examiner Bennett: All right.

Mr. Martin: I have no objection giving that to him if you will offer it in evidence.

Examiner Bennett: Off the record.

(There was a discussion off the record.)

Mr. Albert: May it please the Court, I ask the Court to direct Mr. Martin to show me Commission's Exhibits 493-A and B, which is a report allegedly prepared by this witness who says that he has not the copy with him, and who says that the report is in the possession of the Commission's attorney, and is a copy of the report that he made out, that is a statement of what he has testified to, and from which written report of what occurred I would like to cross-examine him. I think that is certainly within the province of cross-examination.

6114

Examiner Bennett: Well, if he had examined from that report, I would ask the attorney for the Commission to submit it to you.

Mr. Albert: If your Honor please, may I most respectfully request—I urge that I can cross-examine the witness in order to contradict him from any written piece of paper which contains a statement made prior to the time he became a witness. I do not think I am bound by the fact that the man did not refer to that piece of paper. Supposing that this gentleman had by chance written to me telling me something directly contrary to what he has testified to on the stand.

Examiner Bennett: Well, if it fell into your possession, of course you could; there is no doubt about it. We will not argue that. The question is, it does not seem to be in your possession. 6116

Mr. Albert: Is not this in custodia legis now, your Honor?

Examiner Bennett: I think the Commission should make those papers available. I think it is childish not to—

Mr. Martin: Your Honor please—

Examiner Bennett: —not for permanent custody, but available for this examination.

Mr. Albert: No, your Honor, I just want to examine them and see what is in them.

Mr. Martin: At this time, I offer this paper in evidence.

Mr. Albert: I object, if your Honor please. There has been no foundation laid for it. 6117

Mr. Martin: You laid it yourself.

Mr. Albert: I laid what myself?

Examiner Bennett: I will receive it in evidence subject to motion to strike.

Mr. Albert: Exception.

Examiner Bennett: That may be further qualified by questioning this witness.

6118

*Garfield R. MacDonald—For Commission—Cross.*

(Document referred to, heretofore marked for identification Commission's Exhibits 493-A and 493-B, were marked as exhibits and received in evidence.)

Mr. Albert: I ask your Honor's indulgence for just a moment. We want to compare a letter.

Examiner Bennett: Certainly.

*By Mr. Albert.*

Q. Mr. MacDonald, what is the letter of November 12, 1935, written by Mr. Post to J. L. Hudson Company?

6119

Mr. Martin: Now, if your Honor please, I object to any cross-examination on these exhibits by Mr. Albert. He identified the exhibits, and he certainly cannot cross-examine them on his own cross-examination.

Mr. Albert: I suppose I put them into evidence, your Honor?

Mr. Martin: You identified them.

Mr. Albert: It is really a sad state of affairs when the respondent has to identify things for the Commission in order to have the Commission put them into evidence.

Examiner Bennett: Go ahead with your cross-examination.

6120

(Question read.)

Examiner Bennett: If you want to ~~do anything~~ with that letter show it to the witness.

Mr. Martin: Sir?

Examiner Bennett: I say, if you want to ask him anything about that letter, show it to the witness.

Mr. Albert: If it please the Court, may I point out that he mentioned it in his report, Commission's Exhibits 493-A and B?

Examiner Bennett: It does not make any difference.

Mr. Martin: He did not in his direct examination.

Examiner Bennett: I should like him to see any documents you ask him about.

Mr. Albert: I want to know what his knowledge is, since he contradicts the letter.

Examiner Bennett: There is an objection to that letter, and I sustain it.

Mr. Albert: Then I move that Commission's Exhibit 493 be stricken from the record. Commission's Exhibit 493-B specifically says, according to his interpretation, to ignore the letter—I want to know what his interpretation of the letter of November 12 is. 6122

Examiner Bennett: Let him have the letter if you want him to interpret it.

Mr. Albert: May I have a ruling on my motion to strike Commission's Exhibit 493?

Examiner Bennett: Oh, no, if you want to be headstrong here—

Mr. Albert: I am not attempting to—if I am mistaken, I want to preserve my record on what my meagre rights are.

May I have a ruling?

Examiner Bennett: You will not have a ruling on that until you either submit the letter or withdraw that question. If you want to be headstrong about it, we will just stop there. 6123

Mr. Albert: I very respectfully differ from your Honor's interpretation of what I am attempting to do.

Examiner Bennett: You may have your exception.

Mr. Albert: On the basis—

6124

*Garfield R. MacDonald—For Commission—Cross.*

Examiner Bennett: You may have your exception. You may show him the letter.

Mr. Albert: That is all I want is an exception, your Honor. Very well.

Examiner Bennett: Go ahead and show him the letter.

Mr. Albert: I did not know your Honor had granted me an exception. That is why I was—

Examiner Bennett: I think I told you about four times.

Mr. Albert: I am sorry.

6125

(A paper was marked for identification Respondents' Exhibits 43-A and 43-B.)

Mr. Albert: At this time, may it please the Court, may I ask that Mr. Sappington be requested to leave the proceedings during the cross-examination of Mr. MacDonald?

Examiner Bennett: There isn't any objection to that. I think I will ask Mr. Sappington to—there is an open court room down here, you will find a comfortable place that you can wait, if you will do that, please.

(Thereupon Mr. Sappington left the court room.)

Examiner Bennett: All right. Proceed.

*By Mr. Albert:*

6126

Q. I show you Respondents' Exhibits 43-A and 43-B for Identification, Mr. MacDonald, and ask you if that is the letter of November 12 referred to in Commission's Exhibit 493-B?

Mr. Martin: Now, if your Honor please, I respectfully submit that this is not proper cross examination. This witness gave no testimony whatsoever about any written communications or any



letters in his direct testimony. He testified that he was present at a conference and what took place at the conference, and what took place immediately after the conference, and I respectfully submit that this is not proper cross-examination.

Mr. Albert: May I call to your attention Commission's—

Examiner Bennett: Show me Commission's Exhibit 493, please.

Mr. Albert: Here it is, in the very first paragraph.

Examiner Bennett: What is the other document? (Papers were handed to the Examiner.)

Examiner Bennett: I will ask you to qualify the witness, to qualify that question before you go further. Sustain the objection to it at the present time. If you make any foundation for it I will let him answer it. You have not thus far.

*By Mr. Albert.*

Q. Mr. MacDonald, have you seen the letter of November 12, 1935, Respondents' Exhibit 43-A?

Examiner Bennett: That is, did you see it before this morning?

Mr. Haycraft: Has the witness seen it yet?

Mr. Albert: Withdraw it.

*By Mr. Albert.*

Q. I show you Respondents' Exhibit 43-A, and ask you if you saw that letter before? A. Not since the meeting in Mr. Dowley's office referred to.

Q. But you saw it at the meeting in Mr. Dowley's office, did you not? A. Prior to that meeting.

Q. You saw it prior to that meeting? A. Upon receipt of the letter.

6130

*Garfield R. MacDonald—For Commission—Cross.*

Q. In other words, the letter was shown to you—the letter was addressed to you, was it not? A. Yes.

Q. Well, didn't you get it? A. That is what I said. I saw it prior to that meeting.

Q. And you read it prior to the meeting? A. Right.

Mr. Albert: I offer Respondents' Exhibit 43-A in evidence.

Mr. Martin: Your Honor please, we have no objection to it being offered in evidence, except that it is not proper cross-examination.

6131

Examiner Bennett: 43-A and B. Well, it may be, if he makes a foundation for it. I wish you would find out from this witness if he made a report to a meeting; he was cross-examined about it. Let us connect those things up, if they have any connection, and let us get to it.

Mr. Albert: If it please the Court, unless the record thus far shows that he made a report upon the conference that was had, may I respectfully urge to the Court that Commission's Exhibits 493-A and 493-B are improperly in evidence. I thought they were admitted by reason of the fact they were a written report of the conference.

Examiner Bennett: All right. I will sustain the objection to your question. You will do one thing or the other.

6132

Mr. Albert: If your Honor please, I am frankly puzzled as to what—

Examiner Bennett: I have asked for further qualification of those papers.

Mr. Albert: May I respectfully suggest of the Court that I am puzzled as to what is meant—if I know I will be glad to comply—

Examiner Bennett: There was a motion to strike. Now, if you are just trying to kill time

haggling about every point that comes up, why, that is one thing; I suppose there is nothing can prevent you except some idea of your responsibility. If you want to get along, why, I would advise you to follow the suggestions of the Examiner.

Mr. Albert: Let me say this, your Honor. I am not attempting to kill time, and thus far any time that has been killed this morning I believe has been through the Commission's attorneys' childish acts so characterized by your Honor in refusing to permit me to see Commission's Exhibits 493-A and B.

Now, very frankly, I do not quite understand what your Honor wants me to do with this witness with respect to bringing out the information—

6134

Examiner Bennett: I want you to find out whether he made a written report, as I told you, whether he made a written report upon this meeting he was cross-examined about. I want to connect those papers up with that meeting, if they have any connection.

By Mr. Albert.

Q. Now, Mr. MacDonald, did you make any written report of the conference about which you have just testified?  
A. I made a written memorandum of my understanding of what had transpired in my presence in this meeting and submitted it to Mr. Dowley.

6135

Q. When did you make that written report? A. Immediately after the meeting, as soon as I returned to my office.

Q. Well, which is a correct recital of what occurred at that conference; your oral testimony this morning or the written report which you made?

The Witness: Kindly repeat the question.  
(Question read.)

6136

*Garfield R. MacDonald—For Commission—Cross.*

A. I believe they are both correct.

Q. So that if one is in error they are both in error; is that so? A. I don't know.

Q. Well, if they are both correct, meaning that one is equal to the other; then if one is in error they both are in error, are they not?

Mr. Martin: I object to any assumption on his part that they are in error, your Honor.

Mr. Albert: I think it is a perfectly valid question, your Honor. I am laying a foundation. I think your Honor has shown—has been shown of what value these reports are thus far of the various A.M.C. stores.

6137

Examiner Bennett: The witness may answer.

*By Mr. Albert.*

Q. Answer the question.

The Witness: What is the question?

(The question was read.)

The Witness: Your Honor, I don't know how to answer that question.

*By Mr. Albert.*

Q. Now, Mr. MacDonald, you have testified that both recitals, your oral recital on the witness stand, and your written recital, Commission's Exhibit 493-A, 493-B, are equally correct; have you not? A. Yes.

6138

Q. So that each one—

Examiner Bennett: Is that the testimony, or is it that both were correct? Not equally correct. I wish you would go back—the reporter is gone.

*By Mr. Albert.*

Q. Which do you say, Mr. MacDonald, are they both correct; substantially correct, or are they both equally correct? A. Written—

Mr. Martin: I object to that, your Honor. He has already asked him the question and the witness has testified that they were both correct.

Mr. Albert: I am simply trying to enlighten your Honor.

Examiner Bennett: That is what I was trying to find out, whether that was his testimony.

Mr. Albert: Mr. Martin doesn't even want to enlighten the Court, now.

6140

Examiner Bennett: I wanted to find out whether they were correct, unqualifiedly.

The Witness: The written report made immediately after the meeting is undoubtedly more detailed than the oral report given this morning.

Examiner Bennett: But they are both correct?

The Witness: To the best of my knowledge.

Examiner Bennett: All right.

*By Mr. Albert:*

Q. Have you omitted from your oral testimony anything that you reported in your written testimony? A. My oral testimony was not as complete.

Q. Did you omit to refer in your oral testimony to any matter aside from the details of the matter that you have reported in Commission's Exhibit 493-B?

6141

Mr. Martin: Now, if your Honor please, at this time I would like to resume my objection. Here Mr. Albert is trying to cross-examine the witness on his own cross-examination, papers that I identified, and I submit that is entirely and wholly improper.

Examiner Bennett: Yes.

6142

*Garfield R. MacDonald—For Commission—Cross.*

Mr. Albert: May I call to the Court's attention that these are Commission's exhibits in evidence and have been placed into evidence by the Commission and not by me, your Honor? And that your Honor has specifically, despite the fact that these exhibits are in evidence as the Commission's exhibits, asked me to identify them further? Well, I don't see what I am supposed to do here. I am supposed to do one thing for the Commission's attorneys and your Honor has asked me to qualify them further and yet they are already in evidence as Commission's exhibits.

6143

Examiner Bennett: They are in evidence. Go ahead with your cross-examination.

*By Mr. Albert,*

Q. Now, Mr. MacDonald—

Examiner Bennett: I think the documents and the testimony speak for themselves, so far as I can see. You are asking a rather futile question but—

Mr. Albert: If the witness—the witness seems to have some difficulty in answering them, your Honor. I would like to proceed, if I may.

Examiner Bennett: All right. Overruled. You may answer. You may answer the question.

Read the question.

6144

(The question was read.)

A. Only to the statement made in the written report that we were to be allowed to sell out the dresses remaining in stock; also request had been made by Mr. Goldston of the Guild that we not reorder.

Q. Except for that you have testified orally to everything that is contained in the written report, being Commission's Exhibit No. 493-B? A. Yes, as I remember the report.



Q. And, of course, you have testified fully as to all of the important matters in Commission's Exhibit 493-B; have you not? A. As I remember them.

Q. Did you tell us on oral examination anything at all about a letter of November 12, 1935?

Mr. Martin: Objected to. He wasn't asked any such question as that.

Mr. Albert: He was asked, if it please the Court, for a report on the conference.

Mr. Martin: He——

Mr. Albert: And his written report shows that the letter of November 12 was referred to and it was deliberately omitted from the witness' report in order to make it difficult for the respondents to bring out anything about that letter, which completely changes the whole character of this conference. I don't think I am bound by the fact that the witness deliberately omitted something which is important.

6146

Mr. Martin: If your Honor please——

Mr. Albert: It is a new philosophy of cross-examination, if it please the Court. I humbly submit that merely because the witness doesn't say something about a matter, I can cross-examine him about a matter which is particularly germane to the matter in hand. Under such a species of philosophy, with respect to cross-examination, I don't think that anybody can cross-examine anyone about anything.

6147

Mr. Martin: I respectfully renew my objection.

Examiner Bennett: Overruled.

Mr. Martin: On the ground that it is not proper cross-examination.

Examiner Bennett: Overruled. You may answer.

Mr. Martin: Read the question.

(The question was read.)

A. No, I didn't.

6148

*Garfield R. MacDonald—For Commission—Cross.**By Mr. Albert.*

Q. As a matter of fact, Mr. MacDonald, when you completed your oral testimony with respect to this conference about which you now testify, you have omitted orally to tell us of two matters? Didn't you specifically say that there was nothing further spoken about it to your knowledge? A. No.

Q. Didn't you say that in your oral testimony? A. No.

*Mr. Martin:* He did not.

*By Mr. Albert.*

Q. Didn't you say there was no further agreement, "to my knowledge"? A. I don't remember that I did.

6149

Q. You don't recall what you testified to ten minutes ago? A. Not to that extent.

Q. You are not certain of what you are testifying to, is that it? A. Yes.

Q. Well, if you are certain, have you any less knowledge now of the actual facts than you had when you testified ten minutes ago? A. No.

Q. Now, you read Respondents' Exhibit—Commission's Exhibit 493-A before you went into the conference with Mr. Goldston; did you not? A. I read it in receipt of the letter.

Q. Well, that was before you went into the conference with Mr. Goldston; wasn't it? A. Yes.

6150

Q. Then you read it before you went into the conference with Mr. Goldston; didn't you? A. Yes.

Q. You were fully aware of the contents before you went into that conference; weren't you? A. I presume so.

Q. And that letter was the subject of that conference; was it not? A. I can't recall the letter. I would like to see the letter.

Q. Well, in that conference with Mr. Goldston—by the way, who was at that conference? A. Mr. Dowley, Mr. Preston, Mr. Simmons, myself and Mr. Goldston.

Mr. Albert: Would you mind repeating that answer?

(The answer was read.)

*By Mr. Albert.*

Q. You stated, did you not, that prior to coming into court to-day you read your written report? A. Not to-day.

Q. When did you read that written report last? A. Last week.

Q. Last week? A. Right.

Q. Just prior to coming in. How long after the conference did you make this written report?

Mr. Martin: Objected to. He has already testified when he made it.

Mr. Albert: May I ask the indulgence of the Court, if he has testified, to have him repeat it. It will take less time than Mr. Martin's objection.

Examiner Bennett: Overruled. You may answer.

The Witness: Really on my return to the office.

*By Mr. Albert.*

Q. That is, when you left Mr. Dowley's office and went to your office you dictated this? A. Right.

Q. How long would you say that it took you to go from your office—from Mr. Dowley's office to your office? Are they both together? A. No.

Q. Where are they? A. One is on the eleventh floor and one is in the first basement.

Q. You went right down? A. I stopped, as I related, on the main floor to speak to Mr. Goldston and then Mrs. Miller, the shopper.

Q. You followed them down? A. No.

Q. And they preceded you to the main floor? A. Yes.

6154

*Garfield R. MacDonald—For Commission—Cross.*

Q. How is it that you stopped at the main floor when you were going down to your office in the basement? A. The elevators don't run to the basement.

Q. You have to get off at the main floor in order— A. That is right.

Q. —to go downstairs to the basement? A. Walk down, yes.

Q. In walking from the elevator on the main floor to the basement you saw Mr. Goldston and Mrs. Miller there? A. I did.

Q. That is how you happened to meet them at the time; is that it? A. That is right.

6155

Q. Now, Commission's Exhibit—withdrawn. Respondents' Exhibit 43-A and B was discussed at this conference on November 16, 1935; was it not?

Mr. Martin: Objected to as there is no such exhibit in evidence that I know of.

Examiner Bennett: What was the question?

(The question was read.)

Examiner Bennett: That has been asked once. Hasn't it been answered?

Mr. Haycraft: He said he hadn't seen the letter.

Mr. Albert: No, the question was withdrawn, I think.

Examiner Bennett: All right. Overruled. You may answer.

6156

The Witness: I can't recall what the letter is, your Honor.

*By Mr. Albert.*

Q. You don't know what is contained in that letter of November 12, 1935? A. I don't recall.

Q. —1936? A. I don't recall.

Q. Wasn't that letter of November 12, 1935, discussed at the conference on November 16, 1935?

Mr. Martin: Objected to, your Honor. He has already testified he doesn't know what that letter is.

Examiner Bennett: Has he examined it during this examination?

Mr. Albert: Now, if it please the Court—

Examiner Bennett: To interpret it?

Mr. Albert: I am trying to lay a foundation for this letter, and I would like to bring it out in my own way. Is the objection sustained?

Examiner Bennett: I will sustain the objection unless you show him that letter so that he can read it.

*By Mr. Albert.*

6158

Q. What do you mean, Mr. MacDonald, in your written report of the conference on November 16, when you said, "It was agreed by Mr. Goldston that we were to ignore the letter written us on November 12, 1935"?

Mr. Martin: Objected to until the witness is given an opportunity to see that letter.

Mr. Albert: Oh, ridiculous. He has got a written report here, the letter of November 12. Didn't he know what he was talking about when he put it in his written report? If you want to concede that I will take that concession.

Examiner Bennett: I will overrule the objection. Let him answer.

The Witness: Will you repeat the question?  
(The question was read.)

6159

The Witness: I meant that the agreement reached on November 16 was to supersede any prior communications or agreements.

*By Mr. Albert.*

Q. Didn't you discuss the letter of November 12, 1935, at that conference? A. I did not.

6160

*Garfield R. MacDonald—For Commission—Cross.*

Q. Wasn't it discussed by those present? A. I can't recall. I don't know what the letter is.

Q. What are you doing, fencing with me now, Mr. MacDonald? A. I am not fencing. I can't answer a question about something that I know nothing about.

Q. You know nothing about the letter of November 12? A. I can't recall that communication of November 12.

6161

Q. And despite the fact that by an oral conference allegedly between Mr. Goldston and Mr. Dowley, Mr. Preston and Mr. Simmons, you were to ignore a written communication from the Fashion Originators Guild under the signature of Albert M. Post, about which you thought sufficient to make a written report to Mr. Dowley, you mean to tell us that you don't know what was in that letter of November 12? A. It was in the—

Mr. Martin: Objected to. The witness has already answered.

Examiner Bennett: I will sustain the objection. You show him the letter and treat the witness fairly in that respect.

*By Mr. Albert.*

Q. Well, now, I show you Respondents'—

Mr. Albert: Exception.

6162

*By Mr. Albert.*

Q. I show you Respondents' Exhibit 43-A, and ask you if that is the letter referred to?

Examiner Bennett: Read the letter and then answer questions about it.

(The witness reads the letter referred to.)

Examiner Bennett: All right. Proceed.



*By Mr. Albert.*

Q. Is that the letter of November 12, 1935, that is referred to in your written report? A. It is.

Mr. Albert: I offer Respondents' Exhibits 43-A and 43-B into evidence.

Examiner Bennett: It has been received, I think.

Mr. Albert: Mr. Martin objected to my referring to it before upon the grounds that it was not in evidence.

Examiner Bennett: It was received in evidence.

Mr. Albert: Thank you.

Examiner Bennett: As I remember. Anyway, it is received.

6164

Mr. Albert: Thank you.

Mr. Martin: If your Honor please, at this point there is one more question I would like to ask the witness on direct examination.

Mr. Albert: May I be permitted to complete my cross-examination, your Honor, before Mr. Martin wants to attempt anything?

Examiner Bennett: Ask it on redirect examination.

Mr. Martin: All right, sir.

*By Mr. Albert.*

Q. Now, Mr. MacDonald, does the letter of November 12, 1935—was the letter of November 12, 1935, discussed at that meeting? A. It was.

6165

Q. You are certain of that? A. Yes.

Q. Before you couldn't recall? A. No.

Q. Did you discuss it? A. No.

Q. Did you have a copy of this letter? A. No.

Q. You have never seen a copy of the letter before? A. I didn't say I didn't see a copy. I didn't have the copy at the meeting.

6166

*Garfield R. MacDonald—For Commission—Cross.*

Q. At the meeting? A. (Witness nods head affirmatively.)

Q. In connection with reading the report, Commission's Exhibit 493-B, before you came into court, that you stated you read last week, did you read Respondents' Exhibit 43, the letter of November 12? A. No.

Q. So that you didn't refresh your recollection with respect to this letter of November 12 before you came into court? A. No.

Q. You didn't want to be able to testify about that; did you? A. I can't answer that, your Honor.

Q. Didn't you know whether or not you wanted to be able to testify about it?

6167

Mr. Martin: Objected to as immaterial.

Examiner Bennett: Sustained.

Mr. Albert: If your Honor pleases, the witness has already told me that he can't tell me whether he wanted to testify about it.

Examiner Bennett: Sustained.

*By Mr. Albert.*

Q. What was said about this letter of November 12, 1935, at the conference? A. I can't recall.

Q. What was said about Mr. Goldston's alleged agreement? What did Mr. Goldston say? A. All the recollection I have of the meeting is the final agreement reached.

6168

Q. And you have no recollection whatsoever as to what was said about ignoring this letter of November 12; have you? A. No.

Q. Well, now, don't you think that the written instructions and an agreement sent to you by Mr. Post pursuant to the letter of November 12, 1935, is at least equally important with what took place at that conference, as regards what Mr. Goldston told you? A. It wasn't my duty to answer that letter.

Q. It wasn't your duty to answer the letter? A. No.

Q. Don't you answer letters that are addressed to you?

A. Not when they confirm policies.

Q. So, in other words, you confirmed the policy? A. When it concerns policies.

Q. Not on concerned policies? A. When it concerns policies of the store.

Q. Somebody else answers them? A. Right.

Q. With whom did you take up Respondents' Exhibits 43-A and 43-B? A. Mr. Dowley.

Q. What was the result of that discussion? A. The meeting.

Q. The meeting? A. (No answer.)

Q. How was the meeting called?

6170

Mr. Martin: Objected to as irrelevant and immaterial as to how the meeting was called.

Mr. Albert: I think it is important, your Honor.

Examiner Bennett: For what purpose?

Mr. Albert: Because I believe that this meeting was not called as a result of this letter of November 12. He stated that it was, and I want to examine him about it.

Mr. Martin: The letter itself says so.

Mr. Albert: I don't think I am bound by this witness' statement that it was so. I want to find out what makes him believe it was so. Of course, by now, the witness is thoroughly prepared to answer the questions.

6171

Examiner Bennett: Well, I will let him answer. Overruled.

The Witness: Would you repeat the question?  
(The question was read.)

The Witness: Do you mean what notification did I have of such a meeting?

6172

*Garfield R. MacDonald—For Commission—Cross.**By Mr. Albert.*

Q. Beg your pardon? A. Do you mean what notification did I have of such a meeting?

Q. Didn't you call the meeting? A. I didn't call that meeting.

Q. Who called it? A. Mr. Dowley.

Q. Didn't you discuss with him the necessity for such a meeting? A. No, I did not.

Q. He didn't tell you anything at all about it? A. No.

Q. How did you get to the meeting? A. Just what did you mean?

Q. Mr. Dowley wasn't present at that meeting and you were. You mean to sit there and tell us that he didn't tell you anything at all about this meeting before it occurred, and yet you represented him at that meeting?

Mr. Haycraft: Object to that question.

Mr. Martin: Objected to.

Examiner Bennett: He hasn't made any such statement.

Mr. Martin: He said Dowley was there. He not only testified to that but the minutes show that they were there.

*By Mr. Albert.*

Q. What did Mr. Dowley say to you about this meeting before you went in? A. There was no comment made to me about the meeting before I went in.

Q. Do you know how the meeting was called by Mr. Dowley? A. I know I was notified by his secretary over the telephone to appear in his office at such a meeting.

Q. And aside from that, you don't know how that meeting arose; is that so? A. I don't know how the meeting arose outside of that.

Q. Why did you say that the meeting was called as a result of the letter of November 12? A. Because that is

6174

the agreement Mr. Goldston reached with Mr. Dowley as the reason of the meeting.

Q. You mean that out of the meeting there resulted an agreement which you say differs from the letter of November 12; is that not so? A. That is correct.

Q. But you testified that the meeting was called in order to discuss the letter of November 12, but you still haven't told us how you know that that was the reason for the meeting being called? A. I heard the statement made in the meeting.

Q. Yes? A. That was the reason for it.

Q. Is Mr. Dowley present here this morning? Mr. Dowley is present here this morning, isn't he?

6176

Mr. Martin: Objected to as irrelevant and immaterial.

Examiner Bennett: Sustained.

*By Mr. Albert.*

Q. Is Mr. Dowley in Cleveland? A. I don't know.

Q. In Detroit? I am sorry.

Mr. Martin: Objected to.

Mr. Meder: As attorney for the company, I will admit he is in the courtroom.

Mr. Albert: Thank you. Is Mr. Dowley available to testify in this proceeding?

Mr. Meder: As attorney for the company, I will admit he is.

6177

Mr. Albert: Thank you. May I also ask as to whether or not he is going to testify?

Mr. Meder: That is not up to me, sir.

Mr. Albert: I would also like to ask Mr. Martin if he will tell me as to whether or not Mr. Dowley is going to testify. If he is, I would like to move that he be excluded from the proceedings.

6178

*Garfield R. MacDonald—For Commission—Cross.*

Mr. Martin: I don't know whether he is going to be called or not, Mr. Albert, to tell you the truth.

Mr. Albert: Now, if your Honor pleases, do you mean to tell me that we have been brought from New York through Boston, Philadelphia, and Cleveland, have been in Detroit for one hearing, and Mr. Martin doesn't know who he is going to call?

Examiner Bennett: Go ahead with your examination.

Mr. Albert: Very well. Then, under the circumstances, since Mr. Martin does not know whether he is going to call Mr. Dowley or not, I respectfully move that Mr. Dowley be excluded from the hearing room during the further cross-examination of Mr. MacDonald about matters which concern Mr. Dowley.

6179

Examiner Bennett: Is he going to be called upon this point?

Mr. Martin: No, sir; not on this point.

Examiner Bennett: All right. Go ahead with your cross-examination.

Mr. Albert: Ha, ha! May I ask the indulgence of the Court?

Mr. Martin, are you going to ask Mr. Dowley anything at all about this agreement of November 16, 1935?

6180

Mr. Martin: I don't even know that I am going to put him on the stand. I certainly am not going to ask him anything about this matter, if I do.

Mr. Albert: Well, now, if your Honor pleases since the attorney for the Commission seemingly refuses to be frank with the respondent as to what Mr. Dowley is going to do——

Mr. Martin: Now, I object to that statement.

Mr. Albert: --I ask that he be excluded from the courtroom.



Examiner Bennett: The Examiner—

Mr. Martin: I object to any further statements.

Examiner Bennett: Go ahead with your cross-examination. That is a matter of discretion of the Examiner, and in his discretion he refuses to exclude him on the assurance that he is not going to be called on this point.

Mr. Albert: Exception.

Examiner Bennett: All right.

Mr. Albert: I ask the attorney for J. L. Hudson & Company as to whether or not Mr. Simmons is present.

Mr. Meder: He is, sir.

Mr. Albert: Now, I ask the Commission as to whether or not they are going to call Mr. Simmons?

6182

Mr. Martin: Mr. Simmons will be called.

Examiner Bennett: On this point?

Mr. Martin: I don't think so, your Honor.

Mr. Albert: Well, since—

Examiner Bennett: If there is any doubt about it, I would prefer to have him excluded.

Mr. Albert: Is Mr. Preston—

Mr. Martin: It is perfectly agreeable to us for him to go out. I have no objection to his going out, to save you a lot of time on that.

Mr. Albert: Is Mr. Preston here?

Mr. Meder: Mr. Post knows him. He is telling you who is here?

6183

Mr. Albert: I didn't ask him about Mr. Preston. I asked you directly.

Mr. Meder: He is the one that has been giving you this information.

Mr. Albert: I am telling you I didn't ask him about Mr. Preston. He didn't tell me about him.

Mr. Meder: I do not know that Mr. Preston is here.

6184

*Garfield R. MacDonald—For Commission—Cross.*

Mr. Albert: That is all I asked you, sir.

Mr. Meder: I answered the question in the first place.

Mr. Albert: You volunteered information.

Mr. Meder: I am not on the stand, sir. I do not desire to be talked to in that way by you.

Mr. Albert: Neither do I desire to be talked to by you, which is very simple—we are even.

Mr. Meder: Not by a long ways.

Mr. Albert: Well, there is plenty of time before the week is out.

Examiner Bennett: Off the record.

6185

(There was a discussion off the record.)

Examiner Bennett: Now on the record.

*By Mr. Albert.*

Q. Mr. MacDonald, did the J. L. Hudson Company ask the Fashion Originators Guild when—withdrawn. Was there any further communications from J. L. Hudson Company to Fashion Originators Guild relative to this conference of November 16, 1935?

Mr. Martin: Objected to as not proper cross examination.

Examiner Bennett: Sustained.

*By Mr. Albert.*

6186

Q. Prior to the receipt of Commission's Exhibit 492-A in evidence, is there any correspondence or communications between J. L. Hudson Company and the Fashion Originators' Guild of America?

Mr. Martin: Objected to.

Mr. Albert: I may point out to the Court that Commission's Exhibit 493-B is November 16, 1935; that there was correspondence dated November 18.

1935, both exhibits being the Commission's exhibits, and I would like to inquire of this witness as to whether or not there are any other communications. Does the Commission refuse to permit me to find that out?

Mr. Martin: Objected to, your Honor, as not being proper cross-examination, outside of the scope of direct examination.

Examiner Bennett: All right. Sustained.

Mr. Albert: Exception.

*By Mr. Albert.*

Q. Mr. MacDonald, did J. L. Hudson & Company ask the Fashion Originators' Guild for any confirmation of the oral agreement entered into between—allegedly entered into—between Mr. Goldston and representatives of J. L. Hudson & Company? 6188

Mr. Martin: Objected to as being improper cross-examination.

Examiner Bennett: Sustained.

*By Mr. Albert.*

Q. Do you know, Mr. MacDonald, what position Mr. Goldston held in the Fashion Originators Guild as of November 16, 1935? A. I don't know his position.

Q. Haven't you any idea as to his official capacity with the Fashion Originators' Guild? A. No, I haven't. 6189

Q. And despite that fact, you sought no confirmation of the alleged agreement entered into between Mr. Goldston and the representatives of J. L. Hudson & Company?

Mr. Martin: Objected to; improper cross-examination.

Examiner Bennett: Sustained: It is a misstatement of fact. That is the trouble.

6190

*Garfield R. MacDonald—For Commission—Cross.**By Mr. Albert.*

Q. Do you know whether or not you or J. L. Hudson & Company or anyone representing J. L. Hudson & Company, wrote to the Fashion Originators Guild to confirm your thought that Mr. Goldston had in any way modified the condition set forth by Mr. Post in his letter of November 12, 1935?

Mr. Martin: Objected to.

Examiner Bennett: Sustained.

6191

Mr. Martin: Now, I would like to state at this time that Mr. Sappington is coming back on the stand and in order to save time, all of this is going to be gone into thoroughly with Mr. Sappington.

Mr. Albert: Mr. Martin, may I ask you this: Will Mr. Sappington definitely, specifically, and in detail, testify with respect to these matters and not hand it on to subordinates?

Mr. Martin: We are going to put Mr. Sappington back on the stand and he will testify as to matters of policy on behalf of the J. L. Hudson Company.

Mr. Albert: I am not questioning him now on matters of policy.

Mr. Martin: All right, sir.

Mr. Albert: I am questioning him now on this letter of November 12.

6192

Mr. Martin: You just asked him a question on policy.

Mr. Albert: Well, Mr. Sappington testified fully with respect to Commission's Exhibits 423-B, 492-A Respondents' Exhibit 43-A. If you say he will, then I will be through with this witness very shortly; if you say he won't, why, then, of course, I am forced to examine this man. I am willing to save time, but you simply won't concede what Mr. Sappington will testify to. I don't want to be met

with the proposition when Mr. Sappington gets on the stand that he is going to refer me to somebody else.

Mr. Martin: I don't see how he can refer you to a subordinate on a matter of policy.

Mr. Albert: May I point out to Mr. Martin that Mr. Sappington is nowhere mentioned in the report, Commission's Exhibit 493-B?

Mr. Martin: You are asking questions—

Mr. Albert: I am sorry, your Honor. I will have to proceed with this witness.

Mr. Martin: Go ahead.

*By Mr. Albert.*

6194

Q. Now I show you Commission's Exhibit 492-A, Mr. MacDonald, and ask you if you saw that letter?

Mr. Martin: Objected to as being improper cross-examination; outside of the scope of direct examination.

Mr. Albert: I don't see how the materiality of it can, for one moment, be seen by Mr. Martin until I ask further questions about the letter. I am laying a foundation.

Mr. Martin: It was not referred to, either in his testimony, nor in these written minutes.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

6195

Mr. Martin: If your Honor please, I would like to point out that this exhibit was identified by Mr. Sappington, this particular exhibit, No. 492-A, and he was cross-examined by Mr. Albert.

Examiner Bennett: Not on cross-examination.

Mr. Martin: I think that was one of the questions on voir dire.

Examiner Bennett: Voir dire. I see. All right.

6196

*Garfield R. MacDonald—For Commission—Cross.**By Mr. Albert.*

Q. Now, Mr. MacDonald, will you be good enough to tell the Court what there is in the letter of November 12, 1935, that was to be ignored?

Mr. Martin: Objected to; improper cross-examination. He is seeking to cross-examine him on his own cross-examination.

Mr. Albert: We have a most mystifying objection here by Mr. Martin, if your Honor pleases. These exhibits are Mr. Martin's exhibits.

Mr. Martin: That letter is my exhibit?

6197

Mr. Albert: I am referring to his written report, Commission's Exhibit 493-B, in which, for some unaccountable reason, unexplained in the report, unexplained in oral testimony, he states that he is supposed to ignore the solemn written communication of Mr. Albert M. Post. Now, for the enlightenment of the Commission, I am asking him what he is supposed to ignore rather than leave it in the very ineffective state that the Commission's attorneys have left it at the conclusion that something is to be ignored. I want to know what is to be ignored.

Mr. Martin: You didn't ask him as to that.

6198

Mr. Albert: I know darn well—I beg your Honor's pardon. I know very well you didn't ask him anything about it. That is exactly why I am doing it.

Examiner Bennett: I think the witness has testified affirmatively as to what the agreement was, or alleged agreement, and you have the letter.

Mr. Albert: Well, if your Honor pleases, may I not—



Examiner Bennett: Well, if you want to have him interpret in detail, give him the letter and ask him about it.

Mr. Albert: Very well, your Honor.

*By Mr. Albert.*

Q. Now, I show you Respondents' Exhibit 4. I show you Commission's Exhibit 493-B, and ask that your understanding of the matter was which led you to write in your written report that the letter of November 12, 1935, was to be ignored, and ask you what was to be ignored? May I ask you a further question before you answer that one? Are you unable to tell us, to give me the answer to my first question without looking at the Commission's exhibit and respondents' exhibit? 6200

Mr. Martin: Objected to.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

*By Mr. Albert.*

Q. Now, you may answer the first question, Mr. MacDonald?

The Witness: Will you repeat it?  
(Question read.)

A. My interpretation of the letter of November 12 was that it was a misunderstanding between myself and the firm as to the exact policy I was to pursue in the conduct of my business regarding the Guild. My reference in my written report is to the letter, is to clarify this misunderstanding. 6201

Q. Is that your answer, Mr. MacDonald?

6202

*Carfield R. MacDonald—For Commission—Cross.*

The Witness: Will you give me the question again, please?

(Question again read.)

A. Also absorption of mark-downs of higher-priced garments and a 5 per cent. return of our stock.

Mr. Albert: Would you mind repeating that?

(Answer read.)

*By Mr. Albert.*

6203

Q. I do not think that is quite clear, Mr. MacDonald. What do you mean? A. The absorption of the mark-downs of the original referred to in the letter, the original garments.

Q. You mean that that was referred to in the letter?

A. November 12.

Q. Of November 12? That was to be ignored? A. Right.

Q. What else was to be ignored? A. That we were to be expected to return 5 per cent. of our stock in any given month.

Q. What was to be ignored in the letter of November 12? A. That we were not to remove dresses from sale pending a reply from the Guild as to their authorization of being copies.

Q. Did you ignore that? A. Yes.

6204

Q. Was that in any way modified, or was it to be ignored completely? A. We were to ignore it. We were to be allowed to keep our merchandise on sale.

Q. Unqualifiedly? A. Pardon?

Q. Unqualifiedly you were to be permitted to keep it on sale? A. Until—while the shopper was getting instructions from New York, yes.

Q. It was to be on sale during the time that any check was made? A. Yes.

Q. On whether copies were being sold? A. Yes.

*Garfield R. MacDonald—For Commission—Cross.*

6205

Q. Are those the only other things that were to be ignored, Mr. MacDonald? A. As far as I know.

Q. And you state that— A. Relative to my departments.

Q. And you state that you didn't continue to sell dresses, and you did continue to sell dresses while investigation was being made as to whether or not they were copies? A. Right.

Q. Well, then, why have you, in Commission's Exhibit 493-B, your own written report, of the following language, and what does it mean?

Mr. Martin: Objected to, being two questions.

Mr. Albert: Very well.

6206

*By Mr. Albert.*

Q. What does the following language mean, and I read to you from Commission's Exhibit 493-B: "When the F.O.G.A. representative selects a dress and asks us to return it because it is a copy, if we so desire we are to have the privilege of telling her to come back in two hours in order to give us an opportunity to shop the competition to find out if the dress is generally sold by them"? A. It means exactly what it says.

Mr. Albert: The question is withdrawn.

Examiner Bennett: What does it mean?

Mr. Albert: The question is withdrawn, your Honor.

6207

*By Mr. Albert.*

Q. Well, now, Mr. MacDonald, when complaint is made to J. L. Hudson & Company for selling a copy pursuant to Commission's Exhibit 493-B, and the dress is shopped for the two-hour period, then what is the procedure that was to be followed? A. The shopper was to be notified.

6208

*Garfield R. MacDonald—For Commission—Cross.*

Q. Yes. A. We were to tell her where we found this dress and she was to re-shop it.

Q. Yes. A. Upon such proof we were to be allowed to continue the sale.

Q. Was there to be any verification of that with the New York office of the Fashion Originators' Guild? A. She was to report the incident.

Q. Yes. A. To the New York office. Our verification came from the shopper.

Q. Was there not to be a request for an exemption by J. L. Hudson Company? A. Not under the new agreement.

6209

Q. Not under the agreement. You mean referred to in Commission's Exhibit 493-B? A. I mean the agreement of November 6; if that is the Commission's number.

Q. Yes, November 16.

Mr. Haycraft: November 16.

Mr. Martin: November 16.

*By Mr. Albert.*

Q. Now, did you ever see a letter dated November 18 from the Fashion Originators Guild of America to Michael F. Dowley, being Commission's Exhibit 492-A, specifically referring to the conference with Mr. Goldston held on November 16, and further clarifying the position of the Fashion Originators Guild with respect to that conference?

6210

Mr. Martin: Objected to; outside of the scope of direct examination—

Examiner Bennett: Sustained.

Mr. Martin: —and already ruled upon by his Honor.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

*By Mr. Albert.*

Q. To your knowledge, was the alleged agreement referred to in Commission's Exhibit 493-B ever further modified?

Mr. Martin: Outside too, as being outside of the scope of direct examination.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

*By Mr. Albert.*

Q. Is it your contention, Mr. MacDonald, that the agreement referred to in Commission's Exhibit 493-B is the agreement that existed between J. L. Hudson Company and the Fashion Originators Guild up to the time of the red carding?

6212

Mr. Martin: As to your department.

The Witness: Repeat the question.

(Question read.)

Mr. Martin: As to your department.

A. In my department, yes.

*By Mr. Albert.*

Q. So that this Commission's Exhibit 493-B, and this conference that you referred to, was only with respect to your department? A: I can't answer as to the rest of the store; I have no jurisdiction over it.

6213

Q. Well, then, you don't know that it referred to any other department, do you?

Mr. Martin: Objected to.

Mr. Albert: Now, if it please the Court, we have just had a great deal of enlightenment with respect to this agreement that did not appear before.

6214 • *Garfield R. MacDonald—For Commission—Cross.*

Mr. Martin: Objected to. This witness is only in a position to testify as to his particular department.

Mr. Albert: And he now—

Mr. Martin: Wait a moment until I finish.

Examiner Bennett: The witness may say he does not know as to other departments.

Mr. Martin: He has already stated that.

Examiner Bennett: Read the question.

(Question read.)

*By Mr. Albert.*

6215 Q. What is the answer?

Examiner Bennett: You may answer if you know.

A. My understanding was that it was to be the policy of J. L. Hudson—

Q. With respect— A. —to the Guild.

Q. With respect to all departments? A. Right.

Q. Yes.

Mr. Albert: Now I ask if the reporter will be good enough to repeat that question which was qualified by Mr. Martin attempting to get you to testify that it referred only to your own department.

6216 Examiner Bennett: I think the matter has been fully disclosed.

Mr. Albert: Will the reporter please read the question?

(Question read as follows: "Q. Is it your contention, Mr. MacDonald, that the agreement referred to in Commission's Exhibit 493B is the agreement that existed between J. L. Hudson Company and the Fashion Originators Guild up to the time of the red carding?")



Mr. Martin: As to your department.

Mr. Albert: What did Mr. Martin say?

(Remark read as follows: "Mr. Martin: As to your department.")

Mr. Albert: What did the witness say?

(Answer read as follows: "A. In my department, yes.")

Examiner Bennett: Now he has modified it that it is general in its effects as to his understanding of it.

*By Mr. Albert.*

Q. Now, was this the agreement—you contend that this was the agreement, in so far as your department was concerned, up to the time of the red carding, without qualification? 6218

Mr. Martin: Objected to; he has already testified to that two or three times.

Mr. Albert: Very well.

*By Mr. Albert.*

Q. By the way, what is your department?

Mr. Martin: He has already testified to that, your Honor.

Mr. Albert: One word will be his answer. You just took about fifteen.

6219

Examiner Bennett: All right.

Mr. Martin: I feel real talkative this morning.

Examiner Bennett: You may answer.

A. Department 843, basement dresses, referring to this question.

Examiner Bennett: We will take a recess of ten minutes.

6220

*Garfield R. MacDonald—For Commission—Cross.*

(There was a short recess taken.)

Examiner Bennett: Be in order, please. You may proceed, Mr. Albert.

*By Mr. Albert.*

Q. What is the price line in the basement? A. The price line in the basement runs from \$2. In the summer time. It changes with seasons. In the summer time it starts from \$2 to \$6.95.

Q. That is retail? A. Retail, and in the fall from \$2.95 to \$10.95, and \$13.95 on woolens.

6221. Q. That is all right. A. Or suits, or things of that nature.

Q. That is all right; that is sufficient. A. Which are not considered dresses.

Q. Now, Mr. MacDonald, just what was your reference to these 5 per cent. returns that was to be ignored; what was that provision that was to be ignored?

Mr. Martin: Objected to as being outside of the scope of direct examination.

6222

Mr. Albert: If it please the Court, in his written report in Commission's Exhibit 493-B, he refers to the letter of November 12, and he has testified as to why his letter of November 12 is to be ignored. He has testified that certain statements with respect to 5 per cent. returns are to be ignored, and I think for the enlightenment of the Commission and the record the witness should explain what he means by 5 per cent. return should be ignored.

Examiner Bennett: I will let him answer.

A. The paragraph in the letter stating that up to 5 per cent. of our stock was to be returned each month to the manufacturers.

Q. Are you referring to the last sentence on Respondents' Exhibit 43-A, which reads as follows: "Also, that

stores were expected to return copies up to 5 per cent. of their stock in any individual department for any given month." Is that what you are referring to? A. Right.

Q. And that was to be completely ignored? A. As far as my departments were concerned.

Q. Well, now, as a matter of fact, is not the reference to that 5 per cent. the following: That J. L. Hudson & Company protested that if they had to return all the copies in their store at that time it would deplete their stock to too great an extent, and therefore they asked that they be not required to return not more than 5 per cent. of their stock in any one given month?

Mr. Martin: Objected to as being improper cross-examination.

6224

Mr. Albert: Your Honor please, I want to know what he understands—

Examiner Bennett: Sustained. Let you bring out all that I cared about hearing in that line.

Mr. Albert: Exception. That is all.

*Redirect examination by Mr. Martin.*

Q. Mr. MacDonald, with reference to this agreement of November 16, and the instructions to the Guild shopper, Mrs. Miller, as set out in Commission's Exhibits 493-A and B, was that agreement carried out by the Guild shopper?

Mr. Albert: That is objected to as improper redirect; no proper foundation has been laid.

6225

Mr. Martin: I submit it is a perfectly proper question, your Honor.

Mr. Albert: There is not a single bit of testimony, your Honor—

Examiner Bennett: Is that the question we are asked about?

Mr. Martin: Yes.

6226 *G. R. MacDonald—For Commission—Redirect—Recross.*

Mr. Albert: May I point out the additional objection, that this witness has not testified to a single bit of knowledge on his part as to the activities of the Guild shopper. He has restricted his examination—rather, Mr. Martin has restricted his examination specifically to the conference.

Examiner Bennett: I think the record is filled with what the Guild shoppers do, and—

Mr. Albert: That may be, but not with regard this witness' knowledge of it.

6227

Examiner Bennett: Well, I know—well, we are not so prolific with the record as you seem to be. There isn't any use of piling up the same matter over and over again on the record. I will let you recall the witness for further direct examination to that extent, and will instruct him to answer the question, and overrule the objection.

Mr. Albert: Exception.

The Witness: Repeat the question.

(Question read.)

A. It was.

*By Mr. Martin.*

Q. Did you have to return any garments? A. No, we did not.

6228

Mr. Martin: That is all.

*Recross-examination by Mr. Albert.*

Q. Did you return any garments at all, Mr. MacDonald, during that period? A. Not after the conference.

Q. But was there any investigation as to whether or not there were copies being sold in your department? A. Yes.

*Garfield R. MacDonald—For Commission—Recross.*

6229

Q. And you maintain, then, that the only reason that dresses were not returned was because none were adjudged to be copies; is that it?

Mr. Martin: He did not testify—

A. Well—

Mr. Martin: Go ahead.

The Witness: Let me hear the question.  
(Question read.)

A. No, we were exempted on the dresses in question as being sold generally in town.

6230

*By Mr. Albert.*

Q. Do I understand you to mean, Mr. MacDonald, that as each case came up you would then get an exemption?  
A. Right.

Q. But investigation was made— A. That is right.

Q. —in each case, first? A. That is right.

Q. And you applied for exemption to the Fashion Originators Guild? A. To the shopper.

Q. To the shopper. And, so far as you know, the shopper communicated with the Fashion Originators Guild, and as the result of that communication an exemption was granted with respect to whatever the shopper was complaining about; is that it? A. I don't know what action the shopper took with respect to the Guild. My exemption came directly from the shopper.

6231

Q. I see. About how many such cases, asking for an exemption, would you say arose after this conference of November 16, and down to the date of the red carding?  
A. A total number of dresses involved?

Q. Yes. A. Or total number of styles?

Q. Total number of dresses and total number of styles.

A. The total number of dresses was fifty-seven.

6232

*Garfield R. MacDonald—For Commission—Recross.*

Q. Yes. A. The total number of styles—

The Witness: May I refer to my notes, your Honor?

Examiner Bennett: Yes.

A. (Referring to paper) Six styles.

*By Mr. Albert.*

Q. How many instances would you say that covered?

A. You mean how many times did the shopper visit us?

Q. And how many exemptions would you say that covered? A. Six exemptions, six styles.

6233

Q. At six different times? A. At—six separate exemptions, although there was more than one style sometimes at one period.

Q. Yes. What I mean is this, and I want to be sure that we understand each other perfectly, that while there were fifty-seven dresses that were involved, only six times during the course of the period between November 16 and the time of the red carding was it necessary to appeal for exemption on the ground that you had copies; is that what you mean? A. That is right.

6234

Q. And there were no complaints of copies other than these complaints that you have referred to? A. There were other shoppings. At one other time the shopper checked for a style without leaving any definite instructions as to whether it was a copy or not.

Q. I see. And did you— A. She wrote to the Guild asking for a confirmation. At the time the confirmation came back the dress had been sold out.

Q. I see. And with the exception of these matters that you have referred to, there were no complaints that the basement was handling any copies? A. No complaints.

Q. And except for those instances, the basement was complying with the policy with respect to not using copies; is that so?



The Witness: Read the question.  
(Question read.)

A. The basement complied to the copies, or to the dresses, which the shopper had judged were copies.

Q. That is what I say.

Mr. Martin: That is not what you said.

*By Mr. Albert.*

Q. When you say the shopper adjudged them copies, you do not mean specifically that the shopper passed on whether they were copies or not, and nobody else, do you?

A. Well, as far as her instructions, the shopper, together with her information, adjudged whether the dresses were copies or not.

Q. That is, preliminarily, the shopper would state that it was her belief that the copies were being sold in other stores?

Mr. Martin: Objected to.

Q. Is that not so?

Mr. Martin: Objected to.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

*By Mr. Albert.*

Q. That is, it was merely a preliminary investigation by the shopper?

Mr. Martin: Objected to.

Q. And the final question as to whether a dress was a copy or not was not to rest with the shopper, was it?

Mr. Martin: Objected to.

6238

*Garfield R. MacDonald—For Commission—Recross.*  
*Louis B. Sappington—For Commission—Direct.*

Examiner Bennett: Sustained. I do not think we are going into that.

Mr. Albert: Exception.

(Whereupon, at 12 o'clock noon, a recess was taken until 1.30 o'clock P. M. of the same day.)

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AFTERNOON SESSION, 1.30 P. M.

6239

Examiner Bennett: Be in order, please. You may proceed.

LOUIS B. SAPPINGTON resumed the stand and testified further as follows:

*Direct examination (continued) by Mr. Martin.*

Q. Mr. Sappington, do you remember whether or not Mr. Post of the Fashion Originators Guild was in Detroit in May of 1935? A. Yes, sir.

Q. Did you see him at that time? A. Yes, sir.

Q. Did you have any meeting with him? A. Yes, sir.

6240 Q. What took place at that time? A. There was a discussion about the Guild policies and J. L. Hudson Company's co-operation with the Guild. There was also a discussion of change in policy of the Guild as far as the \$10.75 houses were concerned, \$10.75 dress houses.

*By Mr. Martin.*

Q. Do you remember having a conversation at this time with Mr. Post? A. Yes, sir.

*Louis B. Sappington—For Commission—Direct.*

6241

Q. Do you remember what the conversation was about?

A. Yes, sir.

Q. Do you remember what Mr. Post told you? A. Yes, sir.

Q. All right. What did he tell you? A. Mr. Post stated that the buying offices in New York, the Association of Buying Offices, had agreed that all price restrictions were to be removed on Guild copies. In other words, that there was no restriction at all, as to what price line the Guild could adjudge copies. Also, that definite arrangements had been made for \$10.75 houses to become affiliates with the Guild, or, at least, join the Guild in some respect or another.

6242

Mr. Albert: If your Honor please, may I ask that the witness not refresh his recollection from the exhibit that he has referred to, since he has testified that it needs no refreshment? During all of this period, I believe—I am not certain—he has been looking at that exhibit and refreshing his recollection. I would like his independent recollection. He has before him, I believe, the copy of the exhibits that have been placed in evidence, and I think he is reading from it; I am not certain.

Mr. Martin: Now—

Mr. Albert: May I have a ruling on my request, Mr. Martin?

Mr. Martin: I think his Honor has already ruled on it.

6243

Examiner Bennett: All right. I will let the examination continue.

By Mr. Martin.

Q. Mr. Sappington, had anything occurred prior to this time which caused you and Mr. Post to have any discussion along these lines?

(There was a short pause.)

6244

*Louis B. Sappington—For Commission—Direct.*

A. I am not certain. I believe Mr. Post's visit followed up a visit on the part of Mr. Goldston with reference to a copy which was in dispute; that is, on which we hadn't agreed first. I believe Mr. Post, when he first came into my office, discussed that matter.

Q. With reference to the question of \$10.75 houses, had there been anything prior to this meeting which caused you to bring that subject up? A. Yes. We had—we had raised that question with the Guild a number of times regarding the control of copies in the lower price lines.

(A document was handed to the reporter by Mr. Martin.)

6245

(A certain document was thereupon marked Commission's Exhibit No. 496 for Identification.)

*By Mr. Martin.*

Q. What question has been raised with reference to that? A. Well, the question—

Mr. Albert: That is objected to, if it please the Court, as entirely immaterial and irrelevant to the Commission's complaint.

Examiner Bennett: Overruled. You may answer.

Mr. Albert: Exception.

6246

A. The question had been raised what was—what the Guild was doing or would do with respect to our competitors who were selling dresses which we were asked to remove from sale.

Q. And in what price line would that be? A. Well, that would be at that time—that would be \$10.75 cost and below.

Q. What was the original agreement with the Guild with reference to that? A. May I ask that the question be repeated?

*Louis B. Sappington—For Commission—Direct.*

6247

Q. (The question was read.) A. Our understanding of the original agreement with the Guild was that—

Mr. Albert: If it please the Court, the question has been asked, what was the original agreement, not what their understanding was.

Mr. Martin: I think it is a very proper answer to the question.

Examiner Bennett: Overruled.

*By Mr. Martin.*

Q. Go ahead, sir. A. Our understanding of the original agreement with the Guild was that it would not cover dresses under \$16.75 cost.

6248

Q. Had you been requested to return any garments that cost less than that? A. Yes, I believe we had.

Q. Did your firm have any objection to including the lines below \$16.75?

Mr. Albert: That is objected to, if it please the Court, no foundation has been laid, calling for the conclusion of the witness.

Examiner Bennett: You mean "have" or "make"?

Mr. Martin: Made to the Guild.

Examiner Bennett: "Make objection to the Guild," is that what you are trying to get?

Mr. Martin: Yes.

Examiner Bennett: All right.

6249

The Witness: May I have the question.

Mr. Martin: Read the question.

(The question was read.)

Mr. Albert: I think the question has been amended.

Mr. Martin: Change the word "have" to "make."

6250

*Louis B. Sappington—For Commission—Direct.**By Mr. Martin.*

Q. Did your firm make any objection?

Mr. Haycraft: To the Guild.

Mr. Martin: To the Guild to include the lines below \$16.75?

The Witness: Yes.

*By Mr. Martin.*

Q. Why? A. Because our competitors—

6251

Mr. Albert: If it please the Court, I object to that asking for a conclusion of the witness, no foundation has been laid, and certainly the question shouldn't be asked prior to a determination to what objection was made and when it was made and how it was made.

Examiner Bennett: Well, I will sustain an objection until you make further foundation.

*By Mr. Martin.*

Q. To whom was the objection made? A. The objection was made to the A.M.C. and to the Fashion Originators Guild. Mr. Post—

Q. All right. A. Mr. Post, in our discussions with him.

Q. Now, why did you make objection?

6252

Mr. Albert: May I ask, if it please the Court, some preliminary questions before we proceed, in order to further lay a foundation?

Mr. Martin: Just a minute.

*By Mr. Martin.*

Q. When did you make objection? A. I don't recall the exact time because we made many.

Q. Now, why did you make the objection?



*Louis B. Sappington—For Commission—Direct.*

6253

Mr. Albert: May I further ask Mr. Martin most respectfully to ask whether these objections were made orally or in writing?

Examiner Bennett: Well, all right. I wish you would bring that out.

*By Mr. Martin.*

Q. What form did your objections take? Were they oral objections or were they written objections? A. Both.

Q. Now, when—and you say you don't recall when? A. (Witness shakes head negatively.)

Q. Now, why did you make objection?

Mr. Albert: If it please the Court, I object to that. The best evidence ostensibly on the testimony thus far adduced are the written objections. 6254

Examiner Bennett: No, I think not. You may answer. They are both written and oral. You may answer. Overruled.

Mr. Albert: Exception.

A. We objected because dresses that we were asking to—that we were asked to take out of our stock and send back to manufacturers were on sale in competing stores in Detroit.

(A document was handed to the Reporter by Mr. Martin.)

(Whereupon a certain document was marked Commission's Exhibits Nos. 497-A, 497-B and 497-C for identification.) 6255

Mr. Haycraft: Commission's Exhibit 496 is being re-marked, the original being substituted for the copy.

Examiner Bennett: Yes.

0256

*Louis B. Sappington—For Commission—Direct.**By Mr. Martin.*

Q. I hand you Commission's Exhibit 496 for Identification, and ask if you can identify that letter? A. Yes, sir.

Q. What is it? A. It is a letter written by Mr. Bergdahl to me April 10, 1935.

Q. I hand you Commission's Exhibits Nos. 497-A, B and C and ask can you identify that? A. Yes, sir.

Q. What is it? A. This is a letter written to Mr. Oscar Webber by Mr. Bergdahl, dated December 4, 1935.

Q. Is that the letter referred to as being the letter of December 4th, in Commission's Exhibit No. 494-A? A. Yes, sir.

6257

Q. Were these original letters received in your office?

A. That one was, yes, sir. (Indicating.)

Q. Commission's Exhibit 496 for Identification? A. (Witness nods head affirmatively.)

Q. Was this letter received by the J. L. Hudson & Company, Commission's Exhibits 497-A, B and C? A. Yes, sir.

The Witness: May I correct a statement that I made, your Honor?

Examiner Bennett: I beg your pardon?

The Witness: May I correct a statement that I made?

Examiner Bennett: Yes, certainly.

The Witness: I stated that in our original agreement with the Guild we would not go below \$16.75; that should have been \$10.75 cost.

6258

Examiner Bennett: \$10.75?

The Witness: It was \$10.75 instead of \$16.75; yes, sir.

Examiner Bennett: All right.

The Witness: In the return of merchandise.

Examiner Bennett: Yes, I see.

Mr. Albert: May I have that statement read? (Statement read.)

*Louis B. Sappington—For Commission—Direct.*

6259

Mr. Albert: In other words, that was an error in your original testimony, Mr. Sappington?

The Witness: That is right.

Mr. Martin: He has so testified.

(Papers were marked for identification Commission's Exhibits 498-A, 498-B, 498-C, 498-D and 498-E.)

*By Mr. Martin.*

Q. Mr. Sappington, I hand you Commission's Exhibits 498-A to E, inclusive, for identification, and ask can you identify them? A. Yes.

Q. What is it? A. Order form of the J. L. Hudson Company.

6260

Q. Is that the form of order you use in placing all of your orders? A. Yes, sir.

Q. Does that order contain any stamp on it?

Mr. Albert: That is objected to, if it please the Court, as being entirely immaterial and irrelevant, and merely the same type of testimony as Mr. Sappington has previously given. He has testified that a stamp was placed upon the order. He now brings in a blank order slip with a stamp on it which has not been used and states that is the type of stamp that they placed on the order, and that is the type of order that they used.

Mr. Martin: He has not stated that is the type of stamp.

6261

Examiner Bennett: Overruled.

Mr. Martin: Will you let me ask the question?

Examiner Bennett: You may complete it.

*By Mr. Martin.*

Q. Is that stamp placed on the order the same stamp that was placed on all of your orders in pursuance to your signed declaration of co-operation?

6262

*Louis B. Sappington—For Commission—Direct.*

Mr. Albert: That is objected to as immaterial. The best evidence of the stamp that was used upon the orders that were placed is a copy of the order containing the stamp and not an illustration of it.

Examiner Bennett: Overruled. He may answer.

Mr. Albert: Exception.

A. Yes, sir; exactly.

Mr. Martin: I offer this in evidence, your Honor, as Commission's Exhibits 498-A to E, inclusive.

Examiner Bennett: Received.

6263

(The documents referred to, heretofore marked for identification Commission's Exhibits 498-A, 498-B, 498-C, 498-D and 498-E, heretofore marked for identification, were received in evidence.)

*By Mr. Martin.*

Q. Now, Mr. Sappington, with reference to Commission's Exhibits 493-A and 493-B, was that matter brought to your attention? A. You mean the matter covered in this (indicating)?

Q. Covered in the exhibit. A. Yes, sir.

Q. Was the agreement therein referred to in effect in other departments of Hudson's Store than the basement store? A. Yes, sir.

6264

Q. Now, Mr. Sappington, do you know what brought about the red carding of the Hudson Company?

Mr. Albert: May I ask that the question be repeated.

(Question read.)

Mr. Albert: "Yes" or "no."

A. Yes, sir.

*By Mr. Martin.*

Q. Well, what was it? A. We were advised by the Guild shopper in the early part of February, and our buyer was advised, that he had on sale a dress that was a copy of a Guild registered style. There were several visits between the Guild shopper and the buyer and the department, but the result of those visits—it was agreed during those visits that we would have two hours, or about that length of time, to shop our competitors to find out whether or not that dress was on sale; which we did, and we found the dress in three other stores. That matter was called to my attention as a result of a telegram from the Guild to a buyer of the department in which the dress was found. Following out the instructions which I had had, as a result of the meeting held in Mr. Dowley's office regarding exemptions, I wrote a letter to Mr. Post, or at least to the Guild—I think the letter was addressed to Mr. Post—asking for an exemption on this dress for it was being offered for sale by competing stores.

6266

Following the writing of that letter I was away from Detroit for two or three days. What transpired after that letter was written—

Mr. Albert: You refer to subordinates?"

Mr. Martin: Now, I object to any interpolation or interruption on the part of counsel. Counsel knows full well that these remarks by him are not proper, and I have been inclined to be charitable towards such interpolations, but I am at last driven to the point where I am forced to believe that they are willfully and maliciously made on his part.

6267

Examiner Bennett: Make a motion to strike.

Mr. Martin: I move that his remarks be stricken.

Examiner Bennett: They may be stricken.

6268

*Louis B. Sappington—For Commission—Direct.*

A. What transpired following, or during the period I was away from Detroit, I will have to tell you, because of the telegrams, and so forth, which I read, which were sent back and forth between the J. L. Hudson Company and the Guild.

6269

Mr. Albert: Now, if it please the Court, I object to any testimony by this witness as to what happened while he was away. Mr. Dowley, his superior, is right here in court. Mr. Simmons has been called away. Other buyers of J. L. Hudson Company are right here in Detroit and are perfectly competent to tell us from firsthand knowledge what occurred at this particular time, and I object to this witness giving us such unnecessary hearsay as to what occurred while he was away.

Mr. Martin: Your Honor please, I think this witness is fully competent to testify as to what took place in his departments for which he was directly responsible. This was information which came to him. I will ask him the question first—

*By Mr. Martin.*

Q. Did this information come to you in the usual course of business?

6270

Mr. Albert: That is objected to as immaterial. Why is the Commission afraid to put Mr. Dowley on—

Mr. Martin: The Commission will handle its case as it sees fit, Mr. Albert.

The Witness: Mr. Dowley was away, too.

Examiner Bennett: The witness may answer.

*By Mr. Martin.*

Q. Did this information come to you in the usual course of business? A. Yes.



*Louis B. Sappington—For Commission—Direct.*

6271

Mr. Martin: I think it is perfectly competent for him to testify, your Honor.

Mr. Albert: I press—

*By Mr. Martin.*

Q. Was relied upon by you? A. Yes.

Q. And acted upon? A. Yes.

Mr. Albert: I press my objection.

Examiner Bennett: There was final action take, was there?

The Witness: While I was present; yes, sir.

Examiner Bennett: All right, I will overrule the objection.

6272

Mr. Albert: Exception.

Mr. Martin: Go ahead.

Examiner Bennett: Go ahead and tell your story.

A. There was a telegram sent between—there was an exchange of telegrams between J. L. Hudson Company and the Guild.

*By Mr. Martin.*

Q. Have you the copy of those telegrams with you? A. Yes, sir.

Q. All right, sir, go ahead. A. Following that a letter was written to the J. L. Hudson Company by the Guild stating that they would deny—

6273

Mr. Albert: If it please the Court, I object to any qualification or description of any written document not in evidence.

Examiner Bennett: Yes. Well, that is sustained.

6274

*Louis B. Sappington—For Commission—Direct.*

*By Mr. Martin.*

Q. Have you the letter which they wrote? A. Just a minute. I will have to look and see.

Q. All right, sir. Take your time. A. Yes, sir; I have this letter.

(Paper handed to the reporter by Mr. Martin.)

(Whereupon a document was marked Commission's Exhibits No. 499-A, 499-B and 499-C for Identification.)

(Several papers were handed to the reporter by Mr. Martin.)

6275

(Whereupon certain documents were marked Commission's Exhibits Nos. 500, 501-A and 501-B, 502 and 503, respectively, for identification.)

*By Mr. Martin.*

Q. I hand you Commission's Exhibit No. 500 for Identification, and ask you, can you identify that? A. Yes.

Q. What is it? A. It is a telegram from the Fashion Originators Guild to the buyer of the dress department in which the copy was found by the Guild shopper.

Q. Was this telegram referred to in your testimony a few minutes ago? A. That is right.

Q. I hand you Commission's Exhibits No. 501-A and 501-B for Identification, and ask, can you identify that? A. Yes, sir.

6276

Q. What is it? A. It is a copy of a letter which I wrote to Mr. Post February 8, 1936.

Q. Is that referred to in your testimony of a few minutes ago? A. Yes, sir.

Q. Was this letter written in reply to the telegram, Commission's Exhibit No. 500? A. Yes, sir.

Q. I hand you Commission's Exhibit No. 502 for Identification and ask, can you identify that? A. Yes, sir.

*Louis B. Sappington—For Commission—Direct.*

6277

Q. What is it? A. It is a telegram from Mr. Post addressed to me in reply to my letter to him.

Q. Was that referred to as part of the correspondence concerning which you testified? A. Yes, sir.

Q. Was this telegram received in reply to Commission's Exhibits No. 501-A and B? A. Yes, sir.

Q. I hand you Commission's Exhibit No. 503 for Identification, and ask, can you identify that? A. Yes, sir.

Q. What is that? A. This is a telegram from Mr. Oscar Webber to Mr. Post.

Q. Is it a copy of a telegram? A. Copy of a telegram, yes, sir.

Q. Is that part of the testimony which you gave a few minutes ago? Is that part of the correspondence referred to? A. Yes, sir.

6278

Q. Was this telegram sent in reply to Commission's Exhibit No. 502? A. Yes, sir.

Q. I hand you Commission's Exhibits No. 499-A, B and C for Identification, and ask, can you identify that? A. Yes, sir.

Q. What is that? A. That is a letter from Mr. Post to Mr. Oscar Webber dated February 11.

Q. Now, is that part of the correspondence referred to in your testimony? A. Yes, sir.

Q. Was that letter written in reply to Commission's Exhibit No. 503? A. Yes, sir.

Q. Mr. Sappington, was any reply made to this letter from Mr. Post to Hudson & Company, which is Commission's Exhibits No. 499-A, B and C for Identification? Was there any reply made? A. That is the last letter I looked at?

6279

Q. Yes. A. No reply was made to this letter; no, sir.

Mr. Martin: Now, if your Honor please, I offer in evidence these exhibits, Commission's Exhibits No. 499-A, B and C, No. 500, 501-A and B, 502 and 503.

(The letters immediately referred to above were handed to Mr. Albert.)

Mr. Martin: If your Honor please—off the record.)

(There was a discussion off the record.)

Mr. Alber: May I have this on the record? May I be permitted to make objection to having something withdrawn?

Mr. Martin: Nothing is being withdrawn that you have any right to object to, sir.

Mr. Albert: I would like to know, I would like to be appraised of what is going on.

Mr. Martin: All right. You are being appraised of it.

Examiner Bennett: Make a statement.

Mr. Martin: If your Honor please—

Mr. Albert: I don't know what is going on. your Honor.

Examiner Bennett: Make a statement definitely of the situation, a full statement.

Mr. Martin: If your Honor please, Commission's Exhibits No. 481 and 482 are statements containing figures and also certain matter on the bottom of the statements in typewriting. These exhibits were received in evidence by your Honor only in so far as the figures are concerned. The other matter was deemed extraneous and was refused acceptance in evidence.

Examiner Bennett: Yes.

Mr. Martin: I now hand your Honor two statements which contain the exact figures as contained on these two exhibits without the other matter thereon which was not accepted in evidence, and ask that these two new sheets be substituted in place of the old. They are the exact same figures.

Mr. Albert: Now, if it please the Court, there is absolutely no necessity for the substitution of Exhibits 481 and 482 by any other sheets of paper, by reason of the fact that it affirmatively appears in the record—

Mr. Martin: I might say that the exhibits are not a part of the record, do not appear in the record. You are simply being furnished copies of those by the stenographer at your request, but that is not a part of the record in this case.

Mr. Albert: Well, then, accepting Mr. Martin's statement, if it please the Court, I again submit that the Commission has offered Exhibits 481 and 482—

6283

Mr. Martin: And they were not received—

Mr. Albert: And they should be received and remain in the record exactly in the manner that they are at the present time, and there is no reason for substituting anything for it. The record affirmatively and clearly shows as to what is contained in the exhibit as a part of the record.

Mr. Martin: Only the figures were accepted.

Examiner Bennett: These documents which are now submitted have been verified as to the figures; have they?

Mr. Martin: They have, sir.

Examiner Bennett: All right; objection, if there is an objection, is overruled.

6285

Mr. Albert: Exception. Now, may I ask if it please the Court—

Examiner Bennett: Just a moment.

Mr. Albert: I am sorry.

Examiner Bennett: If you please. The reporter is instructed to mark these two new papers the same as the originals and substitute them for the copies which were originally offered.

6286

*Louis B. Sappington—For Commission—Direct.*

Mr. Martin: And to return the originals to the Commission's attorneys?

Examiner Bennett: Yes, exactly.

(The papers referred to were marked by the reporter Commission's Exhibits 481 and 482-A and B; and substituted for the copies which were originally offered.)

6287

Mr. Albert: Now, if it please the Court, may I ask that Commission's Exhibits 481 and 482-A and B, as they presently appear, remain in the custody of the Federal Commission's attorneys and not be returned to J. L. Hudson & Company by reason of the fact we wish those exhibits, which have been identified now as inter-office communications between J. L. Hudson & Company employees, to be made available to the respondents and I don't believe that the Commission wishes to in any way make it impossible for us to get a hold of relevant material of very vital importance, of very vital information.

Examiner Bennett: Well, that is a request to the attorneys. There was an offer pending.

Mr. Albert: May I have an answer, if your Honor please, with respect to my previous request?

6288

Examiner Bennett: You made it to the attorneys. Your request is in the record.

Mr. Albert: I haven't received an answer. I would like to know what course to pursue.

Examiner Bennett: Yes. Well, the attorneys heard you, I imagine.

Mr. Albert: May I have an answer to my request, Mr. Martin?

Mr. Martin: I beg your pardon?

Mr. Albert: May I have an answer to my request with respect to Exhibits 481 and 482?



*Louis B. Sappington—For Commission—Direct.*

6289

Mr. Martin: Would your mind stating your request over again?

Mr. Albert: Yes. Would you like it in simple language?

Mr. Martin: Yes.

Mr. Albert: The simple language is that I don't want those exhibits to go back to J. L. Hudson & Company. They contain information which is very substantially in favor of the respondents' case herein, and I am not desirous that anything should happen to those exhibits, and by reason of the fact that they are marked as Commission's exhibits, I most respectfully request you to keep those exhibits and make them available to the respondents at the proper and appropriate time.

6290

Mr. Martin: Which is evidence which you are not entitled to have, and I will take such care of these exhibits as I see fit.

Mr. Albert: Am I to understand, then, that you refuse to assure me that those exhibits will remain with the Federal Trade Commission?

Mr. Martin: That is satisfactory to me.

Mr. Albert: All right. If it please the Court, I offer in evidence Commission's Exhibit 481 and Commission's Exhibits 482-A and B, not as conclusive or as proof of the statements therein contained, but as evidence of inter-office communications from J. L. Hudson & Company.

6291

Mr. Martin: Objected to.

Mr. Albert: You mean to tell me that the Commission is going to object, your Honor, to the admission of evidence which they produced and originally offered in evidence and to which I objected? What are they trying to conceal?

Examiner Bennett: Objection sustained.

Mr. Albert: Exception.

6292

*Louis B. Sappington—For Commission—Direct.*

Examiner Bennett: Read the record as to the pending documents beginning with Nos. 499-A, B and C.

(The record was read.)

Mr. Martin: Now, if your Honor please, I would like to call to your attention Commission's Exhibit No. 483-A.

Examiner Bennett: Will you wait until we get through?

Mr. Martin: I beg your pardon.

Examiner Bennett: The respondents have before them certain exhibits that were offered in evidence.

6293

Mr. Albert: Now, if it please the Court, I withdraw my previous objection to the offer into evidence by the Commission of Commission's Exhibits 481 and 482-A and B and ask that they be marked in evidence in their entirety.

Mr. Martin: I think your Honor has already ruled.

Examiner Bennett: We are all through with that so far as I am concerned. You have before you a certain matter now. I should not have permitted those exhibits to have been injected in this matter, but I thought that I had missed something in the record, but it has been injected and it has been disposed of now. Let's go ahead.

6294

Mr. Albert: Exception.

Mr. Feldman: Judge, I think we ought to have a conference on this off the record. There is one thing I would like to point out to you.

Examiner Bennett: Off the record, then.  
(There was a discussion off the record.)

(Documents referred to, heretofore marked for identification Commission's Exhibits 499-A, 499-B, 499-C, 500, 501-A, 501-B, 502 and 503 were marked as exhibits and received in evidence.)

*Louis B. Sappington—For Commission—Direct.*

6295

*By Mr. Martin.*

Q. Now, Mr. Sappington, you have testified that no reply was made by your firm to the letter of February 11 from Mr. Post to Mr. Webber, which is in evidence as Commission's Exhibits 499-A, B and C. Why was no reply made to this letter?

Mr. Albert: That is objected to, if it please the Court, as immaterial, calling for a conclusion of the witness, not binding upon the respondent—

Examiner Bennett: Overruled.

Mr. Albert: —no proper foundation has been laid.

Examiner Bennett: Overruled. He may answer.

6296

Mr. Albert: Exception.

A. We were red carded before we could reply.

*By Mr. Martin.*

Q. Was it right after this time, Mr. Sappington, that your firm was red carded? A. After which time, please?

Q. After the period of this correspondence which has just been admitted into evidence? A. Yes, sir.

Mr. Martin: Mark those for identification, please.

(Documents were marked for identification Commission's Exhibits 504 and 505.)

6297

*By Mr. Martin.*

Q. Now, I believe that you testified on Friday that studies were made showing the effect of the red carding on the different departments of your dress business. I hand you Commission's Exhibit 504 for Identification, and ask can you identify that paper? A. Yes, sir.

6298

*Louis B. Sappington—For Commission—Direct.*

Q. What is it? A. This is an analysis of piece sales at certain price lines for Department 358.

Q. Was it made by you? A. Yes, sir.

Q. In the regular course of business? A. Yes, sir.

Q. And those figures are correct, to the best of your knowledge and belief? A. Yes, sir.

Mr. Martin: I offer that in evidence, Commission's Exhibit 504.

Mr. Meder: What department was that in?

Mr. Martin: 358.

6299

Mr. Albert: Now, if it please the Court, I object to Commission's Exhibit 504 unless further explanation is made of what these figures mean. I believe the exhibit is perfectly unintelligible in so far as the figures are concerned as to what the figures refer to. I further object to the gratuitous inclusion in the exhibit of certain remarks "We don't know where that came from"; "We don't know who made that"—

Mr. Martin: The witness has testified he made them.

Mr. Albert: —"We don't know what they are predicated upon"; and, further, upon the ground that no proper foundation has been laid.

Examiner Bennett: I think there should be some further explanation of this exhibit.

6300

Mr. Martin: All right, your Honor. I will have it further identified.

Examiner Bennett: If it can be done by the witness to advantage, and I would object to general statements.

Mr. Martin: Under the heading of "Remarks"

Examiner Bennett: Statements made as to June and July:

Mr. Martin: I am perfectly willing—

*Louis B. Sappington—For Commission—Direct.*

6301

Examiner Bennett: Where they are definite statements of results of figures, I think that they may be taken as—

Mr. Martin: If your Honor please, we have several exhibits here referring to all of this same type, referring to the different departments.

Examiner Bennett: Yes.

Mr. Martin: Now, if you would like us to, we are perfectly willing to cut those remarks off, just leaving the figures and let the witness explain it.

Examiner Bennett: Yes. I don't object to statement of figures where it is made, a statement of figures and that alone. I don't see that there is any objection to these general statements. I suggest that we take those remarks off of all of them.

6302

Mr. Martin: Yes, we will do that.

Examiner Bennett: Well, just as you choose. Just as you choose.

Mr. Martin: That being the case.

(The remarks referred to were cut off.)

Examiner Bennett: What I had reference to as to further explanation, Mr. Martin, was the meaning specifically, the meaning of those columns.

Mr. Martin: Yes. I will ask him that, sir.

Examiner Bennett: Yes.

*By Mr. Martin.*

Q. Now, Mr. Sappington, with reference to Commission's Exhibit for Identification, 504, will you explain to me just what this first column of figures under the heading '35, '36 volume change means? A. That is the volume change, 1936, compared with 1935, for the months designated in this column (indicating). For example, in February—

6303

Mr. Albert: Do you mind if I follow?

Mr. Martin: Certainly not. Come around.

6304

*Louis B. Sappington—For Commission—Direct.*

A. For instance, in February, 1936, the volume in dollars was 11.6 per cent. below the volume in dollars for February, 1935.

*By Mr. Martin.*

Q. And so on down? A. So on down that column.

Q. Down the line? A. Yes.

Q. Now, what does the next line refer to? A. The next column referred to the piece sales, the difference in piece sales on the same basis. In other words, in February of 1936 we sold fifty-nine more pieces in that department than we did in February, 1935.

6305 Q. And so on down the line? A. Minus is designated as minus, whereas nothing is designated as plus. I can put plus in there if you want plus put in each case.

Q. Now, what do— A. These are retail price lines, \$29.75, \$35, \$39.75; and these figures designate the same comparison as the figures in this column (indicating)?

Mr. Albert: Column 2?

The Witness: In column 2.

Mr. Albert: So that under \$29.75—

The Witness: We have sold nine more pieces—eight more pieces.

Mr. Albert: Meaning that you sold eight more?

The Witness: Eight more. Seventeen less (indicating). (Indicating) Thirteen more.

6306

Mr. Albert: I see.

The Witness: Yes. }

Examiner Bennett: All right.

Mr. Martin: With that explanation, I offer this in evidence.

Examiner Bennett: All right.

Mr. Albert: If it please the Court I object. May I question on the voir dire first, your Honor.

Examiner Bennett: Beg your pardon?



*Louis B. Sappington—For Commission—Direct.*

6307

Mr. Albert: May I question on voir dire?

Examiner Bennett: Yes. Go ahead.

*By Mr. Albert.*

Q. Did you personally prepare this record, Mr. Sappington? A. Yes, sir.

Q. That is, you took the figures off the books of J. L. Hudson & Company yourself? A. That is right.

Q. Now, aside from the fact that these are a comparison of the total figures, have you made any study to determine the cause of the change?

Mr. Martin: I object to that, as to these exhibits, as far as these exhibits are concerned. That is objected to. 6308

Examiner Bennett: The exhibit, so far as it appears, is merely a statement of fact for what it is worth, for whatever it may be worth.

Mr. Albert: Very well, your Honor.

Examiner Bennett: I think it is not yet connected with this particular carding, as I see it. It is merely a statement of the two years for whatever that may mean. I will overrule the objection. Received.

Mr. Albert: Exception.

(Document referred to, heretofore marked for identification Commission's Exhibit 504, was marked as an exhibit and received in evidence.) 6309

*By Mr. Martin:*

Q. Now, Mr. Sappington, I hand you Commission's Exhibit 505 for Identification, and ask can you identify that paper? A. Yes, sir.

Q. What is it? A. This is an analysis of figures for Department 369.

6310 *Louis B. Sappington—For Commission—Direct.*

Q. Does the same explanation, that was given as to the various columns of figures in Department 358, which is Commission's Exhibit 504, apply equally to this exhibit?

A. No, sir.

Q. All right, sir. Will you explain what these are? A. In these, the first two columns do. The third, fourth, fifth, and sixth do not, because these are cost prices while those are retail.

Q. All right. A. Otherwise they are the same, except that in this column (indicating)——

Mr. Meder: Don't say "this." Say the number of the column.

6311

The Witness: One, two, three, four, five. Except in column 5, instead of listing the difference in piece sales we have listed the actual piece sales, 104 in 1935, 14 in 1936.

*By Mr. Martin.*

Q. I see. Who prepared this analysis? A. I prepared that.

Q. That was done in the usual course of business? A. Yes, sir.

Q. Relied on by the store? A. Yes, sir.

Q. It is correct? A. Yes, sir; so far as I know.

Mr. Martin: I offer that in evidence as Commission's Exhibit 505.

6312

Mr. Albert: I object, if it please the Court, to the introduction of Commission's Exhibit No. 505 upon the grounds previously urged with respect to Department 358; and I further object to the inclusion of explanatory matter without any testimony with respect thereto as set forth after the star on the exhibit.

Examiner Bennett: Do you want to remove that note in the exhibit and bring it out in the testimony? You may bring it out in the testimony.

*Louis B. Sappington—For Commission—Direct.*

6313

Mr. Martin: Yes, sir.

Examiner Bennett: You may bring it out in the testimony.

(The note referred to was crossed out by Mr. Martin.)

Examiner Bennett: All right. The explanatory matter that has been objected to has been eliminated. The other objections are overruled and the document is received in evidence as Commission's Exhibit 505.

(Document referred to, heretofore marked for identification Commission's Exhibit 505, was marked as an exhibit and received in evidence.)

6314

(A document was marked for identification Commission's Exhibit 506.)

*By Mr. Martin.*

Q. I hand you Commission's Exhibit 506 for Identification, and ask, can you identify that paper? A. Yes, sir.

Q. What is it? A. Analysis of figures for Department 338.

Q. Who prepared it? A. I prepared it.

Q. In the usual course of business? A. Yes, sir.

Q. And it is information relied on in your store in the ordinary course of business? A. Yes.

Q. And is correct? A. To the best of my knowledge.

Q. Will you explain just what those figures represent? What are the figures in the columns? A. The same as Department 358, which was the first exhibit in this group.

6315

Q. In other words, the same explanation? A. The same explanation.

Q. As was given for Department 358 will apply to this?

A. In all cases. I mean, in all columns.

Q. Which was Commission's Exhibit No.— A. 504.

Q. 504? A. Yes.

6316

*Louis B. Sappington—For Commission—Direct.*

Mr. Albert: What do the top figures refer to, \$29.75, \$35?

The Witness: Retail price lines.

Mr. Albert: That is the retail selling price of the dresses in Department 338?

The Witness: Yes, of these dresses.

Mr. Martin: I offer this in evidence as Commission's Exhibit No. 506.

6317

Mr. Albert: Now, if it please the Court, may I ask that counsel for the Commission, if they desire any explanation from the witness of any exhibits which they intend to present, that that explanation appear in the record, that there not be colloquy between counsel for the Commission and the witness while I am reading other exhibits? The same objection to Commission's Exhibit 506 as to the previous exhibits.

Examiner Bennett: The same ruling. Received in evidence.

(The document referred to, heretofore marked for identification Commission's Exhibit 506, was marked as an exhibit and received in evidence.)

(A document was marked for identification Commission's Exhibit 507.)

*By Mr. Martin.*

6318

Q. I hand you Commission's Exhibit 507 for Identification, and ask, can you identify that paper? A. Yes, sir.

Q. What is it? A. This is an analysis of piece sales for Department 369, February to June, inclusive.

Q. Who prepared it? A. It was prepared for me by our office staff.

Q. Was it relied upon by you? A. Yes, sir.

Q. Used in the regular course of business? A. Yes.

*Louis B. Sappington—For Commission—Direct.*

6319

Q. Believed to be correct? A. Yes.

Q. Will you further describe what those columns there represent? A. I believe that is clear. These are cost prices (indicating). The years are definitely designated.

Mr. Meder: Designate it so the record will show what it is all about.

*By Mr. Martin.*

Q. What does the top row of figures refer to? A. Cost price, cost prices.

Q. And the next row refers to what? A. The two years, 1935, 1936.

Q. Now, coming down the page, what do the figures in the first column refer to? A. Piece sales by months for the year 1935.

6320

Q. And the second column? A. Piece sales for the same month for the year 1936.

Q. And those piece sales for 1935 and 1936 are in which price range? A. \$8.75.

Q. And the other columns across the page refer to the same thing in different price ranges? A. Yes, sir.

Mr. Martin: I offer in evidence Commission's Exhibit 507.

Mr. Albert: Objected to upon the ground that no proper foundation has been laid, immaterial and irrelevant.

Examiner Bennett: Overruled. Received.

6321

Mr. Albert: Exception.

(Document referred to, heretofore marked for identification Commission's Exhibit 507, was marked as an exhibit and received in evidence.)

(Documents were marked for identification Commission's Exhibits 508 and 509.)

6322

*Louis B. Sappington—For Commission—Direct.**By Mr. Martin.*

Q. I hand you Commission's Exhibit 508 for Identification, and ask, can you identify that paper? A. Yes, sir.

Q. What is it? A. These are the net piece sales in dresses for the spring season, February through July, 1935, for these departments listed in the first column.

Q. Who was that prepared by? A. Prepared by our office staff.

Q. For you at your request? A. Yes.

Q. In the ordinary course of business? A. Yes.

Q. And as such relied upon by you? A. Yes, sir.

Q. And believed to be true? A. Yes.

6323

Q. I hand you Commission's Exhibit for Identification 509, and ask, can you identify that paper? A. Yes, sir.

Q. What is that? A. These are the net piece sales of dresses for the spring season of 1936, February through July.

Q. And the same explanation as was given with regard to Commission's Exhibit 508 will apply equally to this one? A. Except that this is for 1936; that is for 1935.

Q. Was this prepared for you at your request? A. Yes, sir.

Q. In the ordinary course of business? A. Yes.

Q. And relied upon by you? A. Yes.

Q. And believed to be correct? A. Yes, sir.

6324

Mr. Martin: I offer Commission's Exhibits 508 and 509 in evidence.

Mr. Albert: The same objection.

Examiner Bennett: Received in evidence.

(Documents referred to, heretofore marked for identification Commission's Exhibits 508 and 509, were marked as exhibits and received in evidence.)



*By Mr. Martin.*

Q. Now, Mr. Sappington, have you formed any opinion as to the effect of the red carding upon store?

Mr. Albert: That is objected to, if it please the Court, as calling for a conclusion of the witness, and no proper foundation has been laid demonstrating what studies he has made or what tests he has taken into consideration.

Examiner Bennett: Overruled.

Mr. Albert: Exception.

Examiner Bennett: You may answer as to whether you have formed an opinion.

6326

*By Mr. Martin.*

Q. Have you formed an opinion? A. May I ask a question?

Q. Have you formed an opinion of the effect of red carding on your store? A. Yes, sir.

Q. Now, Mr. Sappington, with reference to Commission's Exhibits Nos. 481, 482-A, 483-A, 485, 504, 505, 506, 507, 508 and 509, will you tell me what has been the effect on Hudson's Store of the red carding by the Fashion Originators Guild?

Mr. Albert: That is objected to, if it please the Court; calling for the conclusion of the witness, and no proper foundation has been laid; and, in addition thereto, the exhibits now in evidence speak for themselves and the question goes beyond the information contained in the exhibits.

6327

Examiner Bennett: Well, I will ask the witness to give his opinion on that if he wants to connect it up with the exhibits which have been presented to him we will hear him upon that point. Overruled.

Mr. Albert: Exception.

6328

*Louis B. Sappington—For Commission—Direct.**By Mr. Martin.*

Q. Go ahead, sir. A. The question is what effect? May I have the question?

Q. (Question read.) A. To cause a loss of business.

Q. Will you—

Mr. Albert: Now, if it please the Court, I ask that the answer be stricken as not responsive.

Examiner Bennett: Well, it may be stricken. I wish that you would follow the usual course about opinion evidence, ask him what his opinion is, and then let him make his explanation; if he wants to use these documents in making an explanation, why—

6329

*By Mr. Martin.*

Q. Will you tell me what is your opinion as to what effect red carding has had on Hudson's Store?

Mr. Albert: That is objected to, if it please the Court, as immaterial, and not binding; no weight; no probative force or effect unless we know what factors the witness took into consideration in forming his opinion.

Examiner Bennett: Overruled. That is a matter for cross-examination.

Mr. Albert: Exception.

6330

A. Because of the red carding we were denied admittance to certain houses. Because of that it was impossible for us to get certain types of garments in certain price lines which we needed to take care of a business that we had already developed.

Mr. Albert: Now, if it please the Court, I ask that the answer be stricken as not responsive.

Examiner Bennett: Overruled; that is what he is telling about, what effect.

Mr. Albert: Exception.

*By Mr. Martin.*

Q. Will you just go ahead and explain what effect these things have had, explain their effect on Hudson's Store?

Mr. Albert: Now, if it please the Court, I strenuously object to this witness being given carte blanche to say whatever he wants to. I suggest that if the Commission seeks to elicit any information from this witness that it be done in the usual customary manner of question and answer and not a speech/by the witness. I don't know what the witness is going to testify.

6332

Mr. Martin: Do you want me to lead the witness?

Mr. Albert: You mean to tell me he does not know what to tell you unless you want him, that he does not know what the effect is?

Examiner Bennett: Make any objection you wish to make, not a speech.

Mr. Albert: All right. I make an objection on the ground it is not specific—

Examiner Bennett: Overruled. Go ahead and give your opinion.

Mr. Albert: Exception.

Examiner Bennett: At such length as you see fit, but keep to the point as to what effect it had on the store and its business.

6333

A. Well, as these analyses show, in certain of these departments—

6334

*Louis B. Sappington—For Commission—Direct.**By Mr. Martin.*

Q. Name those departments.

A. Well, in Department 358, for example—

Mr. Albert: What exhibit is that, Mr. Sappington?

The Witness: 504.

Mr. Albert: Do you mind if I follow you while you are talking from that exhibit?

Mr. Haycraft: You say 358?

The Witness: 358.

6335

*By Mr. Martin.*

Q. All right, sir, go ahead and tell us what effect it had on Hudson's Store? A. This shows a loss in volume of 11.6 in February; 8.7 in March; 19.4 in April; 21.2 in May. Increase of 10.6 in June; increase of 23.5 in July. Those figures pertain to the dollar volume. Now, it is my belief that our inability to obtain merchandise from Guild houses was responsible for this showing. The showing that this department made in February, March, April and May.

Q. Have you any explanation as to the June and July figures? Yes, sir.

6336

Mr. Albert: That is objected to, if it please the Court; no proper foundation has been laid. I do not think the Court is interested in the witness' explanation unless we know how he reached it. Anybody can look at the figures and give some kind of explanation.

Examiner Bennett: If it is his opinion that that was caused by the red carding, why, we are willing to hear him. That is what he seems to be testifying to.

*Louis B. Sappington—For Commission—Direct.*

6337

*By Mr. Martin.*

Q. What is your explanation for the figures of June and July?

Mr. Albert: Same objection, if it please the Court.

Examiner Bennett: All right, overruled.

Mr. Albert: Exception.

A. The figures of increase of 10.6 in June were caused by promotions at lower price lines not affected by the Guild houses. The increase of 23 per cent. in July was due to earlier sales of custom suits that we had a year ago, thus increased sales of reduced merchandise accumulating from the previous months.

6338

*By Mr. Martin.*

Q. Now, turn to the next department, Department No. 369. A. All right.

Q. All right, go ahead and explain what effect the red carding has had on Department 369?

Mr. Albert: If it please the Court, may I point out to the Court that the witness is seemingly reading from a piece of paper that is right in front of him. I respectfully suggest that a foundation be laid to determine whether or not this witness needs in view of his testimony, to read what the effect was, rather than to tell his own opinion on it. We are not asking him to read what somebody else prepared.

6339

Examiner Bennett: Overruled. You may answer. Go ahead.

*By Mr. Martin.*

Q. Go ahead, sir.

*Louis B. Sappington—For Commission—Direct.*

Mr. Albert: Exception.

A. The—

Mr. Albert: May I point out for the record, your Honor, that the witness is now reading?

Examiner Bennett: Go ahead.

Mr. Martin: Also have the record—

Mr. Albert: In fairness to the witness, I will say that he has now put the paper aside.

Examiner Bennett: You have your objections overruled. Let the witness state his answer.

6341 A. (Resumed) Department 369. This analysis shows a decided drop in piece sales for every month except the month of March for the spring season of this year compared with the spring season of a year ago. At \$10.75 cost we had a decided drop in piece sales for February, March, April and May. At \$11.75 cost we had a very heavy drop in piece sales, during February, March, April and May. For example, in February, we dropped from 104 pieces to 14; in March, we dropped from 123 pieces to 3.

6342 Now, the drop in piece sales at \$10.75 for these four months was due to our inability to buy misses' daytime street dresses from certain Guild houses that we had done business with for a considerable period, and for whose merchandise we had developed a definite demand on the part of our clientele in Detroit.

The heavy loss at \$11.75 cost was due to the loss of one resource, a member of the Guild, with whom we did business almost entirely at the price line, and whose merchandise we were unable to replace.

Mr. Albert: May we have the name of that resource, your Honor?

The Witness: C. H. D. Robbins.



*By Mr. Martin.*

Q. Go ahead, Mr. Sappington, let us have the explanation. A. In the \$12.75 cost price line, our comparatively good showing there is because of merchandise which we obtained from a Guild resource who sold us following the red carding, and who subsequently resigned from the Guild according to his statement to us.

Mr. Albert: May we have the name of that resource, your Honor?

Mr. Haycraft: I object to that.

Mr. Martin: Your Honor please, I object to the witness being forced to divulge his source of supply. That is a question which is of great moment to these merchants, and I do not think, in fairness, that they should be required to divulge their trade secrets.

6344

Mr. Albert: Well, now, if it please the Court—

Examiner Bennett: Wait. The matter is not—

Mr. Albert: Very well.

Examiner Bennett: We will go ahead and get the answer.

Mr. Albert: Very well, your Honor.

Examiner Bennett: You may bring it up again on cross-examination.

*By Mr. Martin.*

Q. Go ahead and answer the next question. A. In Department 338 we show a volume loss of 11.6 for February; an increase of 1.5 for March; a loss of 18.6 for April. We show a loss in piece sales for February of 1, an increase of 9 piece sales for March; a loss of 112 piece sales for April. At \$29.75 we show a loss of 40 pieces.

6345

Mr. Albert: May I suggest, if it please the Court, that the witness not read off the figures? They are on the exhibit.

6346

*Louis B. Sappington—For Commission—Direct.*

Mr. Martin: Your Honor please, I object to this. This witness has a perfect right to refer to anything that is in evidence in making any explanation.

Mr. Albert: He is not making an explanation, your Honor. All he is doing is reading off the figures which are in evidence.

Mr. Martin: If you will quit interrupting and give him a chance—

Examiner Bennett: Go ahead. Go ahead with your answer.

6347

A. I should be very glad to make this just as short as possible. The figures contained in columns 1, 2, 3, 4 and 5, for the months of February, March and April, show that this department did not keep pace with the store as a whole, and we believe this was due to the lack of our inability to buy Guild merchandise—with one exception, the piece sales, or column 5, for the month of March, under the heading \$39.75, show an increase of seventeen pieces. This, we believe, is due to a carry-over of dresses which we had from the month of February, which were delivered to the store before the red carding took place, and which we sold in the month of March.

The other figures I don't think have any bearing on the Guild situation, inasmuch as by that time in this department we had been able to develop some resources which replaced those we had done business with formerly.

6348

*By Mr. Martin.*

Q. All right, sir.

Examiner Bennett: Is it your contention, Mr. Sappington, that there was no other factor which might have accounted for your fall off in sales?

The Witness: There is no other factor that we know of, your Honor, that caused the falling off in sales in these particular cases.

Examiner Bennett: I see.

*By Mr. Martin.*

Q. Now, Mr. Sappington, did Guild activities have any effect on any of the other departments of your store?

Mr. Albert: That is objected to, if it please the Court, calling for a conclusion of the witness; and no proper foundation has been laid.

Mr. Martin: I think this witness has testified he has made a complete study of the situation to determine what effect the Guild activities have had upon this store, and that he has formed an opinion, and I think he is—

6350

Mr. Albert: That is about all we know, what he predicates his opinion—

Mr. Martin: I think he is fully qualified—well, you can bring that out on your cross-examination, Mr. Albert.

Examiner Bennett: All right, you may answer, Mr. Sappington.

Mr. Albert: If it please the Court—

*By Mr. Martin.*

Q. Answer the question.

6351

Mr. Albert: The attorney for the Commission is seeking to qualify his witnesses—

Examiner Bennett: Complete your question.

*By Mr. Martin.*

Q. Did the Guild activity have any effect upon the other departments of your store?

6352

*Louis B. Sappington—For Commission—Direct.*

Examiner Bennett: You have your objection and it is overruled.

Mr. Albert: Exception.

A. Along the same lines our inability to buy merchandise that we needed in order to make our assortments comprehensive in order to put us in a competitive position in the retail field in Detroit, and in order to take care of the demands of our particular clientele who had expected to find certain things in our store in the spring season of 1936, because of their previous experience.

6353

Mr. Albert: Now, if it please the Court, I move that the entire latter part of the answer be stricken out as not responsive to the question.

Examiner Bennett: Overruled.

Mr. Albert: Exception.

Examiner Bennett: Denied.

*By Mr. Martin,*

Q. Has it any effect on your customers, so far as their good will towards Hudson is concerned?

Mr. Albert: That is objected to, if it please the Court, as calling for the conclusion of the witness, and no proper foundation has been laid.

Examiner Bennett: Well, if he knows.

6354

*By Mr. Martin,*

Q. If you know.

Mr. Albert: Exception.

A. I believe it has, yes.

Q. What effect? A. Well, they have—they have not been able to find the kind of garments in our stocks that

they would expect to find from their previous experience with us; they have been unable to order the special order for merchandise that we had in stock during the month of February which we had always—which service we had always given our customers.

Q. Have you formed any opinion as to the effect it has had on your competitive standing with the other stores in Detroit?

Mr. Albert: That is objected to as being immaterial—unless a foundation is laid.

Examiner Bennett: Overruled.

Mr. Albert: Exception.

6356

A. No, I have not.

Q. Have you formed any opinion as to what effect it has had upon your ability to compete with other stores?

Mr. Albert: Objected to, unless a foundation is laid.

Examiner Bennett: Overruled. You may answer.

Mr. Albert: Exception.

A. Well, we know that certain merchandise that is on sale being displayed and advertised by competing stores is not available to us.

Mr. Albert: I ask that the answer be stricken out as not responsive.

6357

Examiner Bennett: Denied.

Mr. Albert: Exception.

*By Mr. Martin.*

Q. Now, Mr. Sappington, do you know whether or not any effort was ever made to organize a local Guild in Cleveland as an affiliate of the Fashion Originators Guild?

6358

*Louis B. Sappington—For Commission—Direct.*

Examiner Bennett: Cleveland or Detroit.

Mr. Martin: I mean in Detroit.

Examiner Bennett: Yes.

Mr. Albert: That is objected to.

*By Mr. Martin.*

Q. Among retail dealers as an affiliate of the Fashion Originators Guild? A. Yes, sir.

Mr. Albert: That is objected to, if it please the Court, as leading, no proper foundation having been laid; testifying to matters which are not in evidence. Mr. Martin knows very well the vice in that question.

6359

Examiner Bennett: Overruled.

Mr. Albert: Exception.

*By Mr. Martin.*

Q. What efforts were made, if you know? A. J. L. Hudson Company was asked to send representatives to a luncheon held at the Hotel Statler at which Mr. Post and Mr. Golby talked to us about the formation of a retail Guild, or branch, whatever it was, in Detroit.

Mr. Albert: May it please the Court, I ask that the answer be stricken unless we have a statement from the witness as to the substance of what Mr. Post said, when he said it, and who was there, and not his opinions and conclusions as to what was said.

6360

Examiner Bennett: Overruled.

Mr. Albert: Exception.

*By Mr. Martin.*

Q. Well, were those the only steps taken to your knowledge, towards the formation of a local guild among the retailers here in Detroit?



*Louis B. Sappington—For Commission—Direct.*

6361

Mr. Albert: That is objected to, if it please the Court.

Examiner Bennett: I wish you would determine whether Mr. Sappington was there or not, whether he attended that meeting.

Mr. Martin: I did not hear, your Honor; I beg your pardon.

*By Mr. Martin.*

Q. Did you attend the meeting? A. Yes, sir.

Mr. Martin: He has testified.

*By Mr. Martin.*

6362

Q. Who else was there?

Mr. Albert: Now, if it please the Court, I object to the entire line of testimony and ask it be stricken out upon the ground it forms no part of the Commission's complaint, being entirely irrelevant to this proceeding.

Examiner Bennett: Overruled.

Mr. Albert: Exception.

*By Mr. Martin.*

Q. Go ahead. A. The question is, who was there?

Q. Yes. A. They were——

Q. To the best of your recollection. A. Three other people from the J. L. Hudson Company. Do you want the names of the people, or just the general statement? 6363

Q. The names. A. Mr. Himelhoch was there of Himelhoch Brothers. Mr. Siegal was there.

Q. Who does he represent? A. Siegal's.

Q. All right, sir, any others? A. There was a representative there from—no, I cannot recall any of the other individuals. There was quite a large number of tables.

6364

*Louis B. Sappington—For Commission—Direct.*

Q. Can you recall what other stores were represented, to the best of your recollection? A. I believe Tuttle & Clark was represented; Russek's—

Mr. Albert: May it please the Court, I ask that this latter testimony be stricken. The witness has testified he was not certain who was there. We certainly do not want his best recollection to something he is not certain of. I think the Commission has made the same cross-examination repeatedly.

Examiner Bennett: Denied.

Mr. Albert: Exception.

6365 *By Mr. Martin.*

Q. Go ahead, Mr. Sappington. A. Well, there was a group of, I should say, fifteen people from the downtown retail section.

Q. Were any other meetings held, to the best of your knowledge and belief, in an effort to organize a local guild among the retailers?

Mr. Albert: If it please the Court, I object to the question upon the ground it is leading; upon the further ground it assumes a state of facts not in evidence; and I ask that the latter part of the question in particular be stricken out as to the organization of a retail guild.

Examiner Bennett: Denied.

6366

Mr. Albert: Exception.

*By Mr. Martin.*

Q. Go ahead, sir. A. There was a second meeting held.

Q. Were you present at that meeting? A. I was not.

Q. Do you recall what Mr. Post said at the first meeting at which you were present?

Mr. Albert: May we have the time fixed, if it please the Court? We still have not had that fixed.

*By Mr. Martin.*

Q. When were these meetings held, do you recall? A. I think I could determine if I could refer to my notes, but I don't remember.

Q. Go ahead, sir, and refer to your notes. A. The second meeting was held about the 8th of May.

Q. Do you recall when the first meeting was held? What year was that? A. 1935.

Q. Do you recall when the first meeting was held? A. The first meeting was previous to that. 6368

Q. Approximately how long? A. Oh, I couldn't tell you.

Mr. Albert: In other words, you recall the second meeting at which you were not present better than you do the first meeting at which you were present.

Mr. Martin: I ask that that remark be stricken from the record.

Examiner Bennett: It may be stricken.

Mr. Albert: May it please the Court, in the light of the fact that after all this testimony has been going in, we now find it refers to incidents that occurred at least in May of 1935, and to all intents and purposes from the witness' testimony, some of it may have occurred in 1934; I ask that the entire line of testimony be stricken out as in no way relevant to this proceeding or to the complaint of the Commission, especially in the light of the fact, I believe—I am not certain of this statement—that the witness has testified that nothing happened with respect to it thereafter. I do not see what earthly purpose this line of questioning can have. 6369

6370

*Louis B. Sappington—For Commission—Direct.*

Examiner Bennett: Denied.

Mr. Albert: Exception.

*By Mr. Martin.*

Q. Do you recall what Mr. Post said at the meeting at which you attended? A. In general, yes.

Q. What did he say? A. He outlined the purposes, and—

Mr. Albert: If it please the Court, I ask that the witness be instructed—

Mr. Martin: Your Honor, please—

6371

Mr. Albert: To tell us what Mr. Post said.

Examiner Bennett: Let the witness testify; you are moving to strike it out.

*By Mr. Martin.*

Q. Go ahead, Mr. Sappington.

Mr. Albert: Exception.

A: Mr. Post outlined the purposes, the purposes of the Guild, why it was organized and what it was attempting to do, and also told us that the Guild would be interested in having a local guild formed in Detroit to regulate the—some of the activities of the merchants here with respect to any agreement that they might reach locally, and with respect to the administration of the Guild's affairs in Detroit.

6372

Mr. Albert: Now, if it please the Court, I ask that the answer be stricken out as not responsive to the question. The question was: What did Mr. Post say? That means that the witness should tell us exactly or in substance the words that were used by Mr. Post and not his interpretation of the meaning of the words by saying that he outlined this

*Louis B. Sappington—For Commission—Direct.*

6373

and he outlined that, and by reason of the testimony of the witness, I believe that the answer should be stricken out as not responsive to the question.

Mr. Martin: If your Honor please—

Mr. Albert: We are not interested in his opinion of what was said.

Mr. Martin: I don't think it is necessary for me to reply to such quibbling as that.

Mr. Albert: Far from quibbling. I don't want his interpretation of what was said. The witness was asked, "What did Mr. Post say?"

Examiner Bennett: All right. Denied.

Mr. Albert: Exception.

6374

*By Mr. Martin.*

Q. Now, Mr. Sappington, as a result of this meeting which you attended, and of the other meeting which you did not attend, was a local guild established in Cleveland?

Mr. Albert: Now, if it please the Court—

Mr. Martin: I mean in Detroit.

Mr. Albert: Now, I ask the Court to admonish Mr. Martin to cease from leading this witness? The question certainly should be phrased in a very proper legal form, which is well known to Mr. Martin: What was the result of this conference, and not a statement of what he wants the witness to say.

6375

Examiner Bennett: Overruled. You may answer.

*By Mr. Martin.*

Q. Go ahead.

Mr. Martin: I withdraw that question temporarily.

6376

*Louis B. Sappington—For Commission—Direct.**By Mr. Martin:*

Q. Did Mr. Post make any representation as to the advantages to be achieved from a local guild? A. He did.

Q. What were those advantages? A. He stated that by the organization of a local guild we would be able to reach certain agreements in Detroit among ourselves, and that—

Q. As to what? A. Well, as to alteration charges, for example.

6377

Q. What else? A. As to the time we would hold promotions; sales. As to the time we would hold clearances; as to the time we would hold our August fur sale; as to the time we would hold our August coat sale; any agreement that might be reached among retailers as to their activities, either in maintaining certain prices or in maintaining certain times for doing certain things.

Q. What other advantages did he outline? A. He stated that if a local guild were formed that local guild could agree among themselves to do certain things.

6378

Q. Such as what? A. Such as I have just enumerated. They can agree that they would not hold their August fur sale until a certain time; they could agree that they would not cut the price of a \$16.95 retail dress below a certain figure in a sale, for example; they could agree that they would make—get certain prices for alterations; this—they could—this retail body could make any agreement that they wanted to among themselves regarding any of their business activities.

Mr. Albert: You didn't need Mr. Post to tell you that—didn't need Mr. Post to tell you that, did you Mr. Sappington?

Mr. Martin: I object to that statement. I ask that it be stricken out.

Mr. Albert: I am sorry.



*By Mr. Martin.*

Q. What was the result of—were there any other representations made by Mr. Post as to advantages which would accrue to the— A. Yes. Mr. Post pointed out that if this retail organization were formed among the retailers in Detroit that the Fashion Originators Guild would assist the local organization in enforcing its regulations.

Q. In what way?

(There was a short pause.)

Mr. Albert: May we have the witness' answer, your Honor? He has remembered pretty quickly everything else.

Mr. Martin: Now, if your Honor please, I object to this constant interpolation of Mr. Albert here. The witness has got a perfect right to answer this question in his own time. He is not obliged to jump off the minute I ask the question. He has a right to refresh his memory.

The Witness: I am not certain.

6380

*By Mr. Martin.*

Q. Did he make any representations as to any other part that the Guild could play in the local field?

Mr. Albert: May we have the question?

(Question read.)

A. I don't remember.

6381

Q. Did he make any representations as to a local shopper? A. Not at that meeting that I recall. We had a local shopper at that time.

Q. Was any discussion had as to how the expenses of the local shopper were to be borne? A. Not at that meeting.

Q. Did you ever have at any meeting that you ever attended? A. Not at any meeting that I attended, no, sir.

Q. Were any representations made at this meeting as to any other local guild as to what they were doing?

Mr. Albert: Oh, that is objected to, if it please the Court, as entirely immaterial and irrelevant. How far are we going with this mess? May we not have the most important question, which Mr. Martin has refused to put to this witness, as to what was the result of all of this, your Honor? Certainly, if nothing resulted from this conference, the entire thing is immaterial and irrelevant, but seemingly the Commission doesn't want to ask that question.

Mr. Martin: I asked it and counsel objected to it.

Mr. Albert: And the question was withdrawn.

Mr. Martin: And the question was objected to by counsel.

Mr. Albert: I objected to the form of it.

The question was withdrawn completely. Ask him the question, "What was the result of this conference?"

Mr. Martin: I will conduct this examination as I see fit, and subject to his Honor's rulings, not as you see it. The sooner you get that through your head the better off we will be and the quicker we will progress in this case. Will you read the question, please?

(Question read.)

*By Mr. Martin.*

Q. By Mr. Post. A. As I recall it, he referred to other local guilds, which ones I couldn't say.

Q. Did he state that guilds had proved successful in other cities?

Mr. Albert: Now, if it please the Court, the witness has testified that he doesn't know what Mr. Post said about other local guilds. In the light of my objection to Mr. Martin, he has the audacity to put the words right in the witness' mouth.

Mr. Martin: He did not say—

Mr. Albert: Now, I say, if it please the Court, there is a time beyond which Mr. Martin should be not permitted to lead this witness.

Mr. Martin: He made no such statement.

Examiner Bennett: You have made an objection?

Mr. Albert: I object to the question as leading.

Examiner Bennett: All right. I will sustain the objection.

6386

*By Mr. Martin.*

Q. What did he say?

Examiner Bennett: I think we have gone as far as—

Mr. Albert: I could tell you what the answer is now, Mr. Martin.

The Witness: I don't recall.

Mr. Martin: Your intelligence overwhelms me.

Examiner Bennett: I sustain the objection to the question.

The Witness: I don't recall what Mr. Post said about other local guilds except that he mentioned that there were other local guilds.

6387

*By Mr. Martin.*

Q. What was the result of these meetings? A. No action was taken in Detroit.

Mr. Albert: Now, if it please the Court—

6388

*Louis B. Sappington—For Commission—Direct.**By Mr. Martin.*

Q. Do you know why? A. Yes.

Mr. Albert: Just a moment. If it please the Court—

*By Mr. Martin.*

Q. State why.

6389

Mr. Albert: If it please the Court, I move that this entire line of testimony be completely stricken out as bearing absolutely no relevancy whatsoever to the complaint of the Commission or to anything that has occurred in Detroit with respect to any relationship between the Fashion Originators Guild and J. L. Hudson & Company; as forming no part of the complaint whatsoever.

Examiner Bennett: Overruled.

Mr. Albert: Now, I also,—

*By Mr. Martin.*

Q. State why.

6390

Mr. Albert: I also ask that the answer of the witness be stricken out as not responsive, upon the ground that Mr. Martin in every single question that he put to the witness on this particular matter asked whether or not Mr. Post made certain representations, and Mr. Martin knows that the word "representations" has a legal connotation, and in every single answer the witness refused to say that Mr. Post made any representations of any kind, but merely stated what it was, that Mr. Post suggested or said, or what the discussion was.

Mr. Martin: I think your Honor has already fully ruled on those objections.

Mr. Albert: May I have a ruling on my motion, please?

Examiner Bennett: Yes. It is denied.

Mr. Albert: Exception.

Mr. Martin: Will you read the question?

(Question read.)

Mr. Albert: I object to that as being irrelevant, no proper foundation has been laid whatsoever; calling for a conclusion of the witness and asking for the operation of the witness' mind.

Examiner Bennett: Overruled.

Mr. Martin: Go ahead and answer.

A. The J. L. Hudson Company was not willing to go ahead with the formation of a local guild. In view of the fact that we stated that we were not interested, the other merchants said—some of them said to us that they would not be interested unless we were, and we were not.

6392

Mr. Martin: That is all.

Mr. Albert: Now, if it please the Court, I ask that the entire testimony be stricken out by reason of the fact that seemingly there was some very vital and important reason why this alleged local guild program was not adopted, and we find that the innocuous and logical reason that nobody was interested in it, and certainly under such a statement of circumstances there can be no relevancy or bearing whatsoever upon this complaint of the Federal Trade Commission, which mentions nothing about it in their complaint as to the fact that a local retail guild was discussed for some time and nothing was ever done about it.

6393

I ask that the entire line of testimony of the witness with respect to this local guild be completely stricken from the record.

Examiner Bennett: Denied.

6394 *Louis B. Sappington—For Commission—Direct—Cross*

Mr. Albert: Exception.

If it please the Court, we have gone about roughly speaking, a half an hour beyond the usual time. Does your Honor—

Examiner Bennett: Oh, no, we haven't.

Mr. Martin: I don't think so.

Examiner Bennett: We haven't gone to our usual time.

Mr. Albert: We started a half an hour sooner.

Examiner Bennett: We stopped a half an hour sooner in the morning.

Mr. Albert: I am sorry, your Honor.

6395

*Cross-examination by Mr. Albert.*

Q. Now, Mr. Sappington, you testified, did you not that with respect to certain matters which were brought up by the Commission that you obtained certain information from "Women's Wear"; isn't that so? A. I don't know what you mean.

Q. Didn't you testify that you learned of something from "Women's Wear," from a reading of "Women's Wear"? A. No, sir.

Q. Didn't you testify that you first learned of the red carding of J. L. Hudson & Company from a reading of "Women's Wear"? A. No, sir.

Q. Did you testify that you learned it from the local representative of "Women's Wear"? A. Yes, sir.

6396

Q. You read "Women's Wear"? A. Sometimes.

Q. You have read it rather assiduously of late, have you not?

Mr. Martin: Objected to as irrelevant and immaterial.

Mr. Albert: I am laying a foundation, if it please the Court.

A. No, sir.



*Louis B. Sappington—For Commission—Cross.*

6397

*By Mr. Albert:*

"Q. You have not been reading the reports in "Women's Wear" of this trial thus far?

Mr. Martin: Objected to as irrelevant and immaterial and not in proper form.

Examiner Bennett: Sustained.

*By Mr. Albert:*

Q. You attended the commencement of these hearings in New York, did you not, Mr. Sappington?

Mr. Martin: Objected to as irrelevant and immaterial.

6398

Mr. Albert: If it please the Court, I want to show that this witness has thoroughly prepared himself with respect to the type of cross-examination that he is going to meet.

Mr. Haycraft: Well, I hope so.

Mr. Meder: He has.

Mr. Haycraft: We will concede that.

Mr. Meder: We will concede that.

Examiner Bennett: Sustain the objection. Go ahead and cross-examine, if you have any.

*By Mr. Albert:*

Q. Have you had the minutes of the hearings thus far as regards the examination of Taylor & Company and Strawbridge & Clothier?

6399

Mr. Martin: Objected to as irrelevant and immaterial.

Examiner Bennett: Sustained.

*By Mr. Albert:*

Q. Now, Mr. Sappington, will you turn, if you please, to your copy of Commission's Exhibit No. 481? I am

6400

*Louis B. Sappington—For Commission—Cross.*

sorry. May I change that to 479 and 478? Was that prepared in the ordinary course of your business, Mr. Sappington? A. This was prepared at my request.

Q. Specifically for this hearing, was it not? A. Specifically for our information.

Q. To be used on this hearing? A. If necessary.

Mr. Martin: Objected to. He has answered the question.

*By Mr. Albert.*

Q. You vouch for the accuracy of it, do you not? A. I believe it is accurate.

6401 Q. Well, now, do you wish us to impute any qualifications to the use of the word "believe," or do you mean that you vouch for the accuracy? A. I accept it as accurate, yes.

Q. All right. Now, with respect to Commission's Exhibit 479, let's save time. I assume you will give the same answers as to its accuracy, will you not? A. Yes.

Q. Those are the outstanding orders as of February 15, 1936? A. Yes.

Q. In the main, when were these orders placed in January of 1936? A. Oh, I should say starting with December.

Q. Back in December, perhaps— A. December of 19—

Q. '35? A. Let's see. Yes, December, 1935, and January, 1936.

6402 Q. Just to be certain of my position, if you will, Mr. Sappington, Commission's Exhibit 478 is a complete list of the Guild houses with whom you did business on February 1, 1935, to January 31, 1936, is that correct? A. 478-A, B, C?

Q. Yes. A. (Witness nods head affirmatively.)

Q. Will you turn to Commission's Exhibit 479-A?

Mr. Martin: Now, I object to the incorrect statement by counsel for the respondent. The exhibit

*Louis B. Sappington—For Commission—Cross.*

6403

speaks for itself. It says, "Guild Houses Used." Now, he puts in the word "complete" list of Guild houses.

Mr. Albert: You don't mean to infer for one moment that this is an incomplete list, do you?

Mr. Martin: I don't—

The Witness: This is a list of houses—

Mr. Martin: Just a second. It is not a question of what he infers. I just don't want an improper statement made for the record. He can testify as to what it means.

The Witness: I mean that this list, 478-A, B and C—

6404

*By Mr. Albert.*

Q. Yes? A. Is a list of houses that our buyers visited and from—and in some cases—I can't testify in all cases—we bought merchandise from, but I know that in the majority of cases, I should say in 99 per cent. of the cases, we bought merchandise from houses listed on Commission's Exhibits 478-A, B and C, and that in all cases we visited them.

Q. Let me make this certain. In the light of, I think, what is Mr. Martin's confusion and objection, you haven't omitted from Commission's Exhibit 478-A any Guild houses from whom you purchased dresses in 1935, have you? A. In 1935?

Q. Yes, down to January 31, 1936? A. I don't think so. 6405

Q. Well, don't you know? A. Not positively.

Q. You don't? A. Not positively.

Q. Are you afraid that the same thing is going to happen to you as happened to Taylor in Cleveland, Ohio, their list of Guild houses? A. I don't know what happened to Taylor in Cleveland.

6406

*Louis B. Sappington—For Commission—Cross.*

Mr. Martin: Objected to.

Examiner Bennett: Sustained.

*By Mr. Albert.*

Q. Well, now, turn to Commission's Exhibit 479. A. All right.

Q. Show me where the Dolces dresses are. A. Very well.

Q. Show me where Dolces dresses is listed in Commission's Exhibit 478-A. A. Under Antman &amp; Barick.

Q. Well, that is a different name? A. Well, we call him John and the other fellow calls him Jack, but Dolces  
6407 and Antman & Barick are the same house.Q. Antman & Barick and Dolces are the same house?  
A. That is right.

Mr. Martin: Ha, ha.

*By Mr. Albert.*

Q. You say you didn't see the Taylor testimony? A. I did not.

Q. Now, will you look at Commission's Exhibit 479-A under Department 369?

Mr. Martin: What?

Mr. Albert: Under Department 369.

The Witness: 479.

6408 Mr. Albert: 369.

Mr. Martin: Page X-1190.

The Witness: All right. I have it.

*By Mr. Albert.*

Q. Will you find for me, if you please, unless that also is under a different name, the house of H. N. Fried Company as a Guild house with whom you did business as listed under Commission's Exhibit No. 478-A? A. Well.

in the case of Department 379, it doesn't necessarily have to be on that list.

Q. Now, will you please find for me that name on the list? A. Because—

Mr. Albert: I ask that the witness be directed to answer my question, your Honor. I have asked him to find me the name "Fried" on the list—that is, Commission's Exhibit 478-A. If Mr. Martin wants to take him on redirect, he may do so.

Examiner Bennett: All right.

Mr. Albert: All I want to know is whether it is on that list.

Mr. Meder: The list speaks for itself.

6410

The Witness: I will have to go on through every other item.

*By Mr. Albert.*

Q. Yes, go through the list.

Mr. Martin: Just a second, Mr. Witness. Counsel has stated all he wants to know is whether it is on that list. I respectfully submit that the list is in evidence and speaks for itself.

Mr. Albert: I asked him to find it on the list, your Honor.

Mr. Martin: You did not. You just made the statement that all you wanted to know was whether it was on that list or not.

6411

Mr. Albert: If Mr. Martin concedes that it is not on the list—

Mr. Martin: I am not conceding anything.

Mr. Albert: I will ask the witness to find it for me.

Mr. Martin: I object, your Honor.

The Witness: I don't see it.

6412

*Louis B. Sappington—For Commission—Cross.*

Mr. Martin: The list speaks for itself.

The Witness: I don't see it.

*By Mr. Albert.*

Q. Now, Mr. Sappington, is H. Lipman listed as a Guild house with whom you did business in 1935?

Mr. Martin: If your Honor please, I object to this line of cross-examination. It is highly irrelevant and immaterial as to whether—

Examiner Bennett: I am going to overrule your objection. Go ahead.

The Witness: Answer?

6413

*By Mr. Albert.*

Q. Is it there? A. I don't see it.

Q. I ask you whether or not you can find Radiant Dress listed as a house from whom you had outstanding orders on Commission's Exhibit 479-A listed on your Exhibit 478-A, which is your complete list of the houses? A. I don't see it. The complete list for 1935.

Mr. Martin: He didn't—your Honor, I object to his using the words "complete list" again. That has been brought to counsel's attention once.

Mr. Albert: And it is—

Mr. Martin: It is stated here. Here is the heading of the exhibit. I think it is highly improper for counsel to keep trying to put words in the exhibit which are not there.

6414

Mr. Albert: Now, if it please the Court, the witness has just this moment said that it is a complete list for 1935, and it is so complete that they put in houses whom they approached during the year but with whom he is not certain that they even bought merchandise. That is how complete 478-A



*Louis B. Sappington—For Commission—Cross.*

6415

is supposed to be, for the information of this Commission, and for this Commission to form findings on.

Examiner Bennett: I think he was uncertain. I think he was somewhat uncertain as to its completeness.

Mr. Albert: Yes. He certainly became uncertain after I went for it.

Examiner Bennett: I got that impression at least. And I don't think you are adding anything to the question by putting in that implication.

*By Mr. Albert.*

6416

Q. Now, Mr. Sappington, will you turn to Commission's Exhibit No. 479-B at page X-1191? A. Right.

Q. Then you see Joseph La Vay listed as a house with whom you had an outstanding order on February 15, 1936? A. Right.

Q. That order was placed, roughly speaking, either in January, 1936, or December of 1935? A. Not necessarily.

Q. It could have been placed before then? A. No; it could have been placed later.

Q. It could have been placed later when? A. It could have been placed in February.

Q. About what time? A. It could have been placed February 1. I don't know what time but it could have been.

Q. And was that the first order that you ever gave to Joseph La Vay & Company?

6417

Mr. Martin: Objected to.

A. I don't know.

Mr. Martin: As being irrelevant and immaterial.

Examiner Bennett: I will overrule the objection.

6418

*Louis B. Sappington—For Commission—Cross.**By Mr. Albert.*

Q. Did you do business with them before February 1, 1936? A. I don't know.

Q. You haven't the slightest knowledge? A. No, sir.

Q. Can you find that out for me? A. I think so.

Q. Will you do so?

Examiner Bennett: Well, now, we will adjourn until 10 o'clock to-morrow morning at this place.

(Whereupon, at 4.40 o'clock P. M., August 17, 1936, the hearing in the above-entitled matter was adjourned.)

6419

Court Room No. 722,  
Federal Building,  
Detroit, Michigan,  
August 18, 1936.

Met pursuant to adjournment, 10 A. M.

Before: JOHN W. BENNETT, Examiner.

(Same Appearances.)

PROCEEDINGS.

6420 Examiner Bennett: Be in order, please. You may resume the stand, Mr. Sappington, please.

LOUIS B. SAPPINGTON resumed the stand and testified further as follows:

*Cross-examination (continued) by Mr. Albert.*

Q. Now, Mr. Sappington, did you find out on what day your order was placed with Joseph Levay & Company? A.

*Louis B. Sappington—For Commission—Cross.*

6421

That information, I think, will be here this morning. We were not able to get it before we left the store.

Q. May I ask whether you have that information with respect to the balance of the concerns listed on Commission's Exhibit 479-B, or are you only bringing it over with respect to Joseph Levay & Company? A. Well, we hadn't—we didn't leave any instructions to that effect at the store, no.

Q. Can you tell me when your order was placed with Bernard Appel? A. No.

Q. Have you any objection to having one of the gentlemen who are here with you call the store and ask them to bring that information over when they come over? A. Well, could I address the Court, please?

6422

Examiner Bennett: Why, yes.

The Witness: I would like to ask to add to my testimony of yesterday afternoon regarding the list which we submitted showing the house, the Guild houses that we used in 1935. Now, there has been some objection to that list because it did not contain some of the names that were used on the list of Guild houses that were—which we had merchandise on order at the time of our red carding. I went through my files and I drew out the list from which we compiled our list of Guild houses in 1935. Now, that list is on the back of a letter written to Mr. Dowley by Mr. Post, November 8, 1935, and that is the basis of our list, the only means we had of obtaining a list that we thought would be at all authentic. Now, this list is headed "Fashion Originators Guild of America, Inc.," and lists dress members, affiliated members, and so forth, does not contain the names which Mr. Albert referred to yesterday afternoon.

6423

6424

*Louis B. Sappington—For Commission—Cross.**By Mr. Albert.*

Q. Well, now, Mr. Sappington, with respect to H. N. Fried, H. Lipman, Radiant, Joseph Levay and Bernard Appel, you did know that they were Guild houses, whether or not they were on the list which you just referred to, didn't you? A. I can't tell—I can't say definitely that we did know. We did at the time.

Q. You included them on Commission's Exhibit 479-B, which is a list of— A. That is right.

Q. —of orders on hand with Guild houses? A. That is a list of orders on hand with Guild houses.

6425

Q. When— A. As of that time. I can't—I cannot tell you whether those houses were members in 1935 or not. They were members then apparently because they refused to deliver us what we had on order, stating that they would not deliver because the Guild told them and they couldn't deliver.

Q. Well, now, they obviously were members of the Guild at the time that the order was placed, were they not? A. That may not necessarily be true. I don't know.

Q. You made no effort to check it? A. At the time we placed the orders?

Q. Yes. A. I don't think—I don't know that.

Q. You made no effort to check it at the time you submitted this list, Commission's Exhibit 479-B? A. At the time we made up our 1935 list—

6426

Q. 479-B? A. No.

Q. You made no effort to check it, then? A. We used this list. We thought this list was the best basis of information.

Q. May I see that list that you are referring to? A. Certainly.

Q. So that you now say that in order to determine whether or not you had certain houses outstanding—certain orders outstanding with Guild houses on or about

*Louis B. Sappington—For Commission—Cross.*

6427

February 15, 1936, you checked with a certain list upon a letter from the Fashion Originators Guild dated November 8, 1935?

Mr. Martin: I object to that as an incorrect statement. The witness did not state that.

*By Mr. Albert.*

Q. What is the fact, Mr. Sappington, as regards your determination of what houses were Guild houses as set forth in Commission's Exhibit 479-B, in which exhibit you have set forth a list of certain houses from whom you could not obtain merchandise after the red carding by reason of the fact that they complied with the Guild program?

6428

Mr. Martin: I object to that as an incorrect statement. Commission's Exhibit 479-B is a list which is headed "Merchandise on order with Guild houses at the time of red carding."

*By Mr. Albert.*

Q. Well, I will simplify it, then: From what source did you determine that the houses listed on Commission's Exhibit 479-B were Guild houses at the time in question?

A. From what source?

Q. Yes. A. From the houses themselves.

Q. At that time? A. At that time.

Q. So that you didn't obtain that from this list that you have referred to?

6429

Mr. Martin: Objected to. The witness did not testify to that fact.

Mr. Albert: I am asking him affirmatively if that is so. I don't care whether he testified to it or not.

Mr. Martin: Don't put the words in his mouth.

Examiner Bennett: You may answer.



6430

*Louis B. Sappington—For Commission—Cross.*

A. The list of houses with whom we had merchandise on order at the time of red carding—

*By Mr. Albert.*

Q. Yes. A. Is a separate and distinct list taken from our records plus a check with the houses themselves as to their reasons for not delivering.

Q. When was that check made? A. That check was made very shortly after our red carding, within ten days or two weeks.

Q. During the course of 1935 had you made any purchases from Bernard Appel? A. I don't know.

6431 Q. Had you made any purchases from Joseph Levay? A. I don't know.

Q. Had you made any purchases from Dolces Dress? A. Yes.

Q. During 1935? A. Yes.

Q. Had you made any purchases from Milton Altmark? A. Yes.

Q. Had you made any purchases from H. Lipman? A. Can't answer that definitely.

Q. Had you made any purchases from Radiant? A. I don't know.

Q. Had you made any purchases from H. N. Fried? A. I don't know.

6432 Q. So that the only one that you don't know whether or not you made any purchases from during 1935 are the houses which I have attempted to demonstrate have been improperly omitted from Commission's Exhibit 478? A. Not necessarily.

Q. Those are the only houses that you don't recall. You definitely recall the others that I have mentioned. A. You haven't asked me all of the houses that we bought from on this list. You simply picked out one or two.

Q. Those that I asked you about you have remembered, haven't you? A. Yes.



*Louis B. Sappington—For Commission—Cross.*

6433

Q. Would you be good enough to turn to Commission's Exhibit 481? Now, Mr. Sappington, will you be good enough to explain the meaning of that particular exhibit, what the figures stand for? First, what does the first line of figures stand for in which you have \$12.75 to \$13.75, \$14.75, \$15.75? Are those cost prices or sales prices? A. Cost price.

Q. Cost prices. And what do the figures with respect to the months represent? A. Piece sales.

Q. Actual piece sales in the department for that period; is that it? A. (Witness nods head affirmatively.)

Mr. Martin: Answer so that the stenographer can get it.

6434

The Witness: Yes, sir.

*By Mr. Albert.*

Q. Is this an accurate compilation of the piece sales?

A. To the best of my knowledge and belief, it is.

Q. Are you trying to qualify your answer in any way?

Mr. Martin: I object to that statement. The witness made a complete statement. He was asked, was the list correct, and he said it was to the best of his knowledge and belief.

Mr. Albert: Well, now, if it please the Court, I do not think that the Commission wants to take anything that this witness won't subscribe to as being accurate on direct examination. Then, on direct examination, in order to get this exhibit into evidence, the witness testified very affirmatively that it was accurate.

6435

Mr. Martin: I don't see—

Examiner Bennett: Yes. Well, I don't see any discrepancy in his testimony.

Mr. Albert: Very well, your Honor.

6436

*Louis B. Sappington—For Commission—Cross.**By Mr. Albert.*

Q. Now, have you a copy of Commission's Exhibit 481 in front of you?

Mr. Martin: Yes, he has.

A. Yes.

*By Mr. Albert.*

6437

Q. Will you be good enough, please—it is a very simple computation—to total the first line of figures in that exhibit? A. Which way, this way or—vertically or horizontally?

Q. Vertically. A. Vertically.

(Witness figures.)

Q. What total did you get? A. Two hundred and seven.

Q. Will you try the third line of figures? A. Three hundred and fifty-seven.

Q. Three hundred and fifty-seven? A. That is right.

Q. And what total is given there? A. It is pretty indefinite here. It looks like 337.

Mr. Martin: Get the exhibit and refer to it.

The Witness: That is right. 337.

6438 *By Mr. Albert.*

Q. What total did you get? A. Three hundred and fifty-seven.

Q. Now, will you total the fifth column, please? A. Six hundred and thirty-four.

Q. Six hundred and thirty-four? A. That is right.

Q. Will you be good enough, please, to re-add the third column? You have made a mistake in adding it. A. No. I get 337.

*Louis B. Sappington—For Commission—Cross.*

6439

Q. Three hundred and thirty-seven is correct? A. Yes.

Q. You added it the first time and you got 357? A. That is right.

Q. The fifth column you have added and gotten the same answer as contained in the exhibit. Now, will you add it again, please, and see that you have made a mistake in adding that column? A. Six hundred and twenty-four.

Q. Instead of 634? A. That is right.

Q. So that your addition of the third column was incorrect and the present computation is correct; and your addition of the fifth column was incorrect and the present column is incorrect; isn't that so? A. That is right.

Q. And is the—

6440

Mr. Martin: Now—

Q. Are the rest of the figures on Commission's Exhibit 481 equally accurate? A. I will check them if you wish.

Q. Well, Mr. Sappington, you realize this is a judicial hearing, don't you? A. Sure.

Mr. Martin: I object to that.

By Mr. Albert.

Q. Weren't these figures thoroughly checked and re-checked before they were submitted to this Commission for its attention? A. I understood so.

Q. But you don't know? A. I was told so, yes.

Q. And quite obviously somebody here in preparing these figures is making errors; isn't that so? A. It is possible.

6441

Q. I mean, you want to be fair about it, don't you? It is quite obvious that some errors have been made in that computation?

Mr. Martin: I object to that. It is quite obvious that an error has been made.

The Witness: One.

6442

*Louis B. Sappington—For Commission—Cross.**By Mr. Albert.*

Q. One error, but where we find one error, God knows where the other errors are; isn't that so?

Mr. Martin: Suppose you look for them?

Q. Isn't that so, Mr. Sappington? A. I don't know.

Mr. Martin: Instead of asserting that they are there:

*By Mr. Albert.*

6443

Q. You don't know. All right, sir. By the way, I notice in Commission's Exhibit 483-A the department number referred to is not contained in the exhibit. What department is that, the junior miss dress department? A. 483-A; yes. Department number?

Q. Yes. A. 371.

Q. That is 371. I mean, I wasn't certain. I wanted to check it. Now, will you turn, if you please, Mr. Sappington, to Commission's Exhibit 483-A? Will you be good enough to tell me, please, as to the meaning of the figures that are contained after the statement "After red carding and during red carding"? You see that during red carding there is an itemization there that the department made a 1 per cent. gain. What does that refer to? A. It refers to the month of February.

6444

Q. I mean, what type of gain does it refer to? Is it on dollar volume, on piece sales, on volume of sales, or what? A. It is on the total dress volume.

Q. In that department? A. In that department.

Q. For February? A. For February.

Q. As compared with 1936? A. With—

Q. With 1935? A. With 1935; that is right.

Q. And Commission's Exhibit 485 contains the same comparative percentages as regards net increases or de-

creases in dollar sales for the various departments referred to for 1936 over 1935; is that not correct? A. That is correct.

Q. Will you look at Department 371 on Commission's Exhibit 485? A. Yes, sir.

Q. And we find that for February the department went ahead of 1935 32.4; is that not correct? A. That is correct.

Q. Now, will you turn to Commission's Exhibit 483? A. Yes, sir.

Q. And we find that the department went ahead, according to Commission's Exhibit 483, for the month of February, only 1 per cent.? A. Not the department.

Q. What is it? A. Total dress volume.

Q. Did you not just tell me that the 1 per cent. gain referred to the— A. Total dress volume.

Q. —total dollar volume? A. Total dress volume in dollars.

Q. Yes. A. Total dress volume in dollars, yes; that is correct.

Q. What does Commission's Exhibit 485 refer to? A. Total department volume.

Q. Now, let me understand this: Is Commission's Exhibit 483 only a part of Department 371? A. That is right.

Q. That is, you have just taken— A. Just the dresses.

Q. —a portion of that department? A. Taken just the dresses.

Q. Well, what else is there in that department? A. Coats and suits. It is the junior wear department.

Q. Well, then, when you entitle Commission's Exhibit 483 as the junior miss dress department; is that not incorrect? A. Well, I might have said junior miss dress section in the junior wear department.

Q. Yes, that would have been a great deal more frank. A. Would have been a little more specific, but I think it is specific enough here where we refer only to the total dress volume, it is clear to us.

6448

*Louis B. Sappington—For Commission—Cross.*

Q. It is clear to you? A. Yes.

Q. But, necessarily, it must be clear to the Commission.

A. Well—

Q. Your inaccurate figures in Commission's Exhibit 481 were likewise clear to you, were they not?

Mr. Martin: I object to any such proceedings.

*By Mr. Albert.*

Q. Now, when I asked you what Commission's Exhibit 483 was, you stated what that department was; without qualification you told me that that was Department 371, did you not?

6449

Mr. Martin: I object, your Honor; he asked him what department it was and he replied..

Mr. Albert: Precisely. And I think that the witness, if he had been frank and fair in his answer, should have told me that that was a subdivision of Department 371.

Mr. Martin: I do not know that the Commission is interested in what you think, either..

Mr. Albert: The Commission will most certainly be, Mr. Martin.

Mr. Martin: I will be surprised if they are.

Mr. Albert: It is about time that you got a few surprises.

6450

Mr. Martin: I think so; you have not given me any yet.

*By Mr. Albert.*

Q. What does the fourth column of figures in Commission's Exhibit 483-A, the fourth and fifth columns, refer to? A. You mean the one beginning 23 per cent. gain, or the one beginning 95? I mean, do you count the months as a column, or just the figures?



Q. No, the one beginning 95. A. The one beginning 95?

Q. Yes. A. Those are piece sales of dresses in 1935 at \$10.75 and \$12.75 cost.

Q. That is, actual piece sales? A. Net piece sales.

Q. What do you mean by net piece sales? A. I mean the sales after the credits are taken off.

Q. You mean by units? A. Units.

Q. So that in 1935, in November, you sold 95 dresses in this subdivision of Department 371; is that what you mean? A. That is right, at \$10.75 and \$12.75 cost.

Q. Right. And in 1935 you sold 225 dresses? A. That is right.

Q. And your 95 dresses in 1935 brought to a net or a gross volume of \$12,491? A. No.

6452

Q. Well, how do you explain the meaning of the figures? A. The figures in column 1?

Q. Yes. A. \$12,491 are the figures for the total dress volume in the department.

Q. That is, without referring to Junior Miss Dress Department? A. The total sales of dresses in the Junior Miss Dress Department 371.

Q. Yes. A. The figures in column 5 are the piece sales for the \$10.75 and \$12.75 cost dresses only.

Q. So that the figures in columns 1, 2 and 3 have absolutely no relationship to the figures in columns 4, 5 and 6? A. Well, they have some relationship, they contain the 95-piece sales at these two cost prices, yes.

Q. But you cannot contrast the figures in columns 1, 2 and 3 with the figures in columns 4, 5 and 6 in order to reach a particular result, can you? A. No.

6453

Q. And there is no explanation on this exhibit as to what these figures mean, is there? A. I think so.

Q. Under— A. Under "Before Red Carding" we have total dress volume covering the first, second and third sections; we have cost dress piece sales, \$10.75 and \$12.75, heading the remainder of the space, the third, fourth, fifth and sixth columns.

6454

*Louis B. Sappington—For Commission—Cross.*

Q. Yes, but you do not specifically say that columns 4, 5 and 6 are again only a part of the subdivision of Department 371?

Mr. Martin: I object, your Honor; the exhibit is perfectly plain and speaks for itself. He has described what it is, and with the description and the exhibit itself, I see no need of going into those far off fields that my friend is trying to get into.

6455

Mr. Albert: They are not particularly far off fields, if it please the Court. I think it is quite obvious when an exhibit of this kind is presented, taking contrasting theories, of determining percentages and volumes, it is quite obvious that the only purposes in presenting an exhibit of this kind is to confuse the Commission.

Mr. Martin: I object to that statement, your Honor, and ask that it be stricken from the record.

Examiner Bennett: It may be stricken.

(Question read.)

Mr. Martin: Objected to.

Examiner Bennett: He may answer that question.

A. No, we do not make any statement there that—other than appears on the exhibit.

6456

*By Mr. Albert.*

Q. And when you have five figures running right across a line, both referring to periods of 1934 and five and five and six, and two of the five referring to percentages of gain or loss, do you not think it is reasonable for the party that is reading that exhibit to infer that those figures have some relationship, one to the other? A. Oh—

Q. —without a detailed explanation on it? A. I don't think so, I think it is perfectly clear.

Q. You think it is? A. Yes, I think so.

Q. From merely a reading of that? A. Yes.

*By Mr. Albert.*

Q. Now, Mr. Sappington, looking to March, on this subdivision of Department 371; and turning over to column 4, which refers to a subdivision of the subdivision, how many dresses were in the subdivision of the subdivision of that department in March of 1935? What was the total stock volume at that time? A. I can't tell you.

Q. You have not any idea? A. No.

Q. What was the total stock volume in 1936? A. I don't know.

6458

Q. So that in so far as these figures are concerned, it is impossible to tell the percentage of dresses sold of the stock on hand at the time in question, is it? A. There are no stock figures on this sheet, no.

*By Mr. Albert.*

Q. Now, Mr. Sappington, were there any unusual conditions in the dress industry at the beginning of 1936 that would affect your store volume? A. I believe that at about that time there was considerable talk about a strike.

Q. Was there not a little bit more than a talk about a strike? A. Not from the results.

Q. Not from the results? A. There was no strike.

Q. There was no strike. Was there anything that accomplished a result similar to a strike in so far as your ability to obtain merchandise was concerned? You seem to be quibbling about the word "strike."

6459

Mr. Martin: I move that that be stricken, your Honor.

Examiner Bennett: What was the last remark?

Mr. Martin: Read the remark.

(Remark read.)

6460

*Louis B. Sappington—For Commission—Cross.*

Examiner Bennett: It may be stricken.

The Witness: What is the question?

(Question read.)

A. We had plenty of merchandise as far as delivery or—with the exception of—in the early part of the year—with the exception of our inability to get merchandise from Guild houses.

*By Mr. Albert.*

Q. Was not there a stoppage in February and March of 1936? A. There was a slowing up on delivery.

6461

Q. And did not that affect your volume? A. No.

Q. On hand? A. We don't think so.

Q. Have you got the figures of your volume on hand? A. I can get them.

Q. Will you be so good as to? A. I will. May I ask my assistant to get those figures now, or would you prefer them later?

Examiner Bennett: Yes, if you prefer to.

The Witness: Would you take care of the stock figures, Mr. Simmons? In 371 dresses on \$10.75 and \$12.75 costs? I think you know about the way I would like to have it prepared.

Mr. Albert: If your Honor pleases, I do not know what the witness means by "I think you would know about the way I would like to have it prepared."

6462

The Witness: I mean the form.

Mr. Albert: We want the figures as they are.

The Witness: I mean the form; I mean the form, so that I can understand.

Mr. Albert: Yes.

Mr. Meder: That is silly. Justice Court stuff. We will bring the original, if you would like to have it.

*Louis B. Sappington—For Commission—Cross.*

6463

Mr. Albert: I would like it very much.

Mr. Meder: We will be glad to.

*By Mr. Albert.*

Q. Now, will you turn to Exhibit 505? A. That is in yesterday's?

Q. That is in yesterday's.

Mr. Martin: Yes.

*By Mr. Albert.*

Q. Have you Commission's Exhibit 505? A. Yes, sir.

Q. Will you look at the third column, please? A. Headed "149"? 6464

Q. Right. What does that 149 refer to? A. It refers to the increase in piece sales.

Q. In Department 369? A. In Department 369 at—

Q. For 1936 over 1935? A. For the month—

Q. For the month of February? A. At \$8.75 cost.

Q. At \$8.75. Now, will you turn to Commission's Exhibit 507? This exhibit, I presume, is equally accurate with the other exhibits? A. I believe so.

Q. Will you be good enough to add the first column of figures under 1935 in the \$8.75 piece line? A. 1569.

Q. And the exhibit is "1570"; is that correct? A. That is correct.

Q. Now, as a matter of fact, will you not be good enough to add that, you will find that it adds up to 1579? A. That is right, 1579. 6465

Q. So that the first column is a mistake; isn't that correct? A. That is correct.

Q. Now, on your own figures for the first and second columns, you have that in 1935, 1570 dresses were sold, and in 1936 2656 dresses were sold—not the corrected figure I have given you, but using your own figures—to

6466

*Louis B. Sappington—For Commission—Cross.*

figure off the percentage of increase—will you be good enough to figure out the percentage of increase? A. You mean 1570 against 2656, or 1579 against 2656?

Q. Oh, no, use your own figures, not my percentages. Use 1570, the figures your auditors used to figure out the percentage. It would not be much of a trick to find a difference in percentage if we take different totals, Mr. Sappington. A. Sixty-nine per cent.

Q. Sixty-nine per cent.? A. That is right.

Q. And on your own figures, your auditors have presented a figure here of 67 per cent.? A. That is right.

Q. That is correct? A. That is correct.

6467

Q. So that they have made a mistake there. Will you turn to the \$12.75 column, and add your figures for 1935, and in order to save time, Mr. Sappington, will you take my statement of the fact that that column does not add up to 586, as set forth in the exhibit, but adds up to 583? A. That is right.

Q. You can check it. Is that correct? A. That is correct.

Q. So that on Commission's Exhibit 507 there are three mistakes in simple computation of the figures that have been presented; is that not so? A. That is right.

6468

Q. Now, on Commission's Exhibit 505, in the difference in piece sales between 1935 and 1936, we have the first figure for February as minus 57. Does that mean that for the \$8.75, \$10.75, \$11.75 and \$12.75, the net difference in amount of piece sales is 57 in favor of 1935, that you sold 57 less pieces in 1936 than you did in 1935? A. No, that is for the total department.

Q. For the total department? A. Yes.

Q. So that in heading Commission's Exhibit 505, analysis of Department 369, again you have not told the whole truth, have you?

Mr. Martin: Objected to. The exhibit speaks for itself, as to what it is, if it has a heading to it.



*By Mr. Albert.*

Q. What does Commission's Exhibit 505 refer to? A. Well, all the columns are marked; it is an analysis of Department 369.

Q. Well, that is what I am saying. A. But you can—

Q. Does not 57 refer to the price lines that you have there? A. It refers to the piece sales for the total department, the same as 1.6 refers to the volume for the total department.

Q. Then the figures under \$8.75, \$10.75, \$11.75 and \$12.75 had no relationship to the first two columns of figures; is that true? A. Yes; they are included in the first two columns.

6470

Q. They are included but you can't tell, you can't possibly compare them in order to get the figure 57; can you? A. It wasn't our intention that you should do so.

Q. You didn't explain that to the Court, did you? A. It wasn't asked.

Mr. Martin: Object.

*By Mr. Albert.*

Q. In other words, you don't intend to make clear anything that the Commission's attorneys don't ask you about?

Examiner Bennett: It is in for what it is worth.

*By Mr. Albert.*

6471

Q. Mr. Sappington, let's get it straight. What does the first column refer to? A. The first column was the percentage of volume change in dollars, '35 against '36.

Q. For what price lines? A. All price lines.

Q. All the price lines. All types of garments? A. All types of garments, everything in 369.

Q. Everything in the department? A. That is right.

6472

*Louis B. Sappington—For Commission—Cross.*

Q. No matter where it is in the store? A. That is right.

Q. What does the second column refer to? A. It refers to the comparison, to the different piece sales.

Q. Yes. A. For the entire department.

Q. For the entire department? A. (Witness nods head affirmatively.)

Q. All price lines? A. All price lines.

Q. All types of garments? A. All types of garments.

Q. Wherever situated in the store? A. Wherever situated in the store.

Q. Do you sell anything else in that department aside from ready-to-wear? Do you sell any hose or accessories of any kind? A. No.

6473

Q. You are quite certain? A. Yes.

Q. Now, the first two columns then completely refer to the whole department? A. That is right.

Q. All price lines? A. That is right.

Q. What does the third column refer to? A. \$3.75 cost dresses.

Q. And the second column—the next column, the fourth column? A. \$10.75 cost dresses.

Mr. Meder: Keep your voice up.

*By Mr. Albert.*

Q. Are there all types of ready-to-wear merchandise included in that \$8.75 cost of your third column? A. All types of ready-to-wear? No, sir.

6474

Q. So that again we have another subdivision of the department in that you have eliminated coats and ready-to-wear suits from your third column; and your third column refers solely to your \$8.75 dresses; isn't that right? A. There are no suits or coats in that Department 369. There are nothing but dresses in there.

Q. Very well. And your \$10.75 cost column, which is the fourth column, what does that refer to? A. That refers to the difference in piece sales at \$10.75 cost.

Q. Solely in the dress line? A. Solely in the dresses. That is all there are in 369, nothing-but dresses.

Q. Nothing but dresses in the whole department? A. What we consider dresses. There might be a technical differentiation if you get to an item called a four-way suit, which is a trade term. We consider that a dress. And everything in Department 369 comes under our dress classification at the J. L. Hudson Company.

Q. Your \$11.75 and your \$12.75 column, I presume your answers would be the same as to those? A. That is right.

Q. Now, what have you omitted in listing in your last four columns that was included in your first two columns' computations? A. Well, there might have been some—

Q. I don't care what there might have been, Mr. Sappington. You stated that the last four columns referred to specific subdivisions of the department, and that the first two columns referred to the entire department. Now, what have you omitted to spread out on the record for the Commission after the first two columns that are included in the first two columns?

6476

Mr. Martin: I object to that question, your Honor. It hasn't been shown that anything has been omitted. I suggest he lay a foundation and ask him if anything has been omitted.

Mr. Albert: The witness has been differentiating between the first two columns and the last four columns, your Honor, ever since I started on this exhibit. I don't think any greater foundation need be laid. I think he sunk himself far enough.

6477

Examiner Bennett: What is the pending question?

(The question was read.)

Examiner Bennett: I will let him answer.

A. I would have to consult the records in that department in order to answer that question. There are times

6478

*Louis B. Sappington—For Commission—Cross.*

when additional price lines are included. I cannot tell you without looking at the records whether any additional price lines to those listed on this page were included in February, March, April, May, June and July, or not.

Q. But you were quite certain that something had been omitted when I first started to question you about this didn't you? A. No.

Q. Weren't you, Mr. Sappington? A. No.

Q. Well, now, it is possible, then, that the last four columns of Commission's Exhibit 505 do reflect the total change in piece sales for Department 369 for 1935-1936; isn't that so? A. They have a bearing on the total piece sales, yes.

6479

Q. Of course, they would have a bearing on it. I am asking you whether or not—let me put it this way. The question is withdrawn. If there have been no additional price lines in that department for that period, you state that you are not certain whether there were or not, then the last four columns in Commission's Exhibit 505 contain the difference in piece sales for the entire department; isn't that so? A. I don't know whether they do or not.

Q. What do they contain? A. They contain the piece sales for the price lines that have been indicated. The column 2 contains the difference—

Q. You have stated— A. —in piece sales for the total department.

6480

Q. Right. A. Now, whether or not the piece sales at \$8.75, \$10.75, \$11.75 and \$12.75 cost comprise the total piece sales in the department in the month of February, I cannot tell you without looking at the record in the store.

Q. In order to see whether any other price lines were sold, is that so? A. During that month, yes.

Q. Right. Now, if no other price lines were sold during that month, then the figures here will constitute the difference in piece sales for that department for the entire

department; isn't that so? A. If we had no other merchandise in the department in the month of February except \$8.75, \$10.75, \$11.75 and \$12.75 cost, then the pieces given on this sheet should total—correspond with the total pieces for the department, if that is true.

Q. Right. Well, now, will you be good enough, please, between now and this afternoon, or now and to-morrow morning, to determine for us, rather, for the Commission, what price lines were sold in these departments in February, March, April, May, June and July in 1935 and 1936 in addition to the ones here listed? A. If we can get that. If we can get that information. I believe we can.

Q. Therefore, Mr. Sappington, to make it perfectly clear—and with the indulgence of the Court at the expense possibly of some repetition—there is no relationship as far as the determination of how the figure was arrived at between column 2 of Commission's Exhibit 505 and the other four columns? A. Column 2 contains the other four columns.

6482

Q. Naturally, but it also contains other figures? A. Possibly; I don't know.

Q. Will you compute, if you please, the total difference in piece sales between 1935 and 1936 for February for Department 369 in the price lines indicated, and see if you get minus 57? A. I don't think that is necessary because we don't know that that includes the whole department.

Q. So that if you do not get minus 57, Mr. Sappington—I am trying to get at a simple method of checking up on your figures merely from the figures that are in the exhibit. If you don't get minus 57, that means that there were other subdivisions of this department that were taken into consideration; is that not so? A. I don't know. I told you that we would have to look at the record to find out what it shows.

6483

Q. In other words, when you say you don't know, you are not taking any chances that the computation of the

6484

*Louis B. Sappington—For Commission—Cross.*

price lines indicated on 505 haven't been inaccurately made; is that not so? You just want to see if you can check on it?

Mr. Martin: Objected to. The witness answered the question fully and fairly.

Examiner Bennett: Sustained.

*By Mr. Albert:*

Q. Will you be good enough to find out for us exactly what other price lines were sold in the Department 369 for the months indicated, because obviously without that we cannot check on the figures even as presented in this exhibit? A. (Witness nods head affirmatively.)

Q. Now, Mr. Sappington, is the same philosophy for the preparation of Commission's Exhibit 506 prevalent in that exhibit as is prevalent in Commission's Exhibit 505? A. Yes.

Q. That was prepared in the same way? A. Yes, sir.

Q. So that the last three columns in addition, or subtraction of the last two columns, or any manipulation of the last three columns will not necessarily give you the computation that is set down in the exhibit in the second column? A. Yes, sir.

Q. Will you obtain the figures for us, please? A. Yes, sir.

Q. Now, will you turn, Mr. Sappington, to Commission's Exhibit 507?

Mr. Albert: May I ask the indulgence of the Court for a minute or two?

Examiner Bennett: All right.

Mr. Martin: Your Honor please, the witness indicated a desire for a short recess.

Examiner Bennett: All right. We will give him a recess of five minutes.

The Witness: Thank you.

6486



(There was a short recess taken.)

Examiner Bennett: Be in order, please. You may resume.

*By Mr. Albert.*

Q. Now, coming back to Commission's Exhibit 505, Mr. Sappington, and turning to the column "\$11.75 cost," we again find a different sort of computation of figures than is contained in the rest of the exhibit. Will you explain that, please, as to what you mean by 104 to 14? A. I mean that the piece sales, "\$11.75 cost," dropped from 104 pieces in February of 1935, to 14 pieces in February of 1936.

Q. So that the figure 14 in that column corresponds to the figure minus 191 in the \$10.75 column; is that it? A. Oh, no.

6488

Q. Will you explain that, please? A. I just stated that under \$11.75 cost the figures indicated that the piece sales dropped from 104 pieces in February of 1935 to 14 pieces in February, 1936.

Q. Yes. You are correct. That is my mistake. The difference between 104 and 14 corresponds to the figure in 191 in \$10.75 cost? A. That is right.

Q. That is right. Now, turning to Commission's Exhibits 508 and 509, what do those figures constitute? They constitute—if I may paraphrase it for you—correct me—the difference in the net piece sales in the departments listed for all types of merchandise for all price lines between 1935 and 1936; is that correct? A. No.

6489

Q. What then? A. Exhibit 508 gives the actual net piece sales.

Q. Yes. A. For the spring season of 1935, February to July.

Q. Yes. A. For the departments listed in the first column.

Q. Including all price lines and all types of merchandise sold in the department? A. That is right.

6490

*Louis B. Sappington—For Commission—Cross.*

Q. And 509 gives it for 1936; is that not right? A. That is right.

Q. So that addition or subtraction of the comparative figures for the respective months for departments listed will give you the difference in the net piece sales for those departments between 1936 and 1935; isn't that so? A. That is right.

Q. All right. A. With the exception of Department 331 inasmuch as this is for dresses only.

Q. I don't quite understand that. A. Well, you see, this Exhibit 508 is headed "Dresses" and Exhibit 509—

6491

Q. 508 is headed "Dresses"? A. Yes. Commission's Exhibit 508, "Dresses, Net Piece Sales, Spring, 1935."

Q. Go ahead. A. 509, "Dresses, Net Piece Sales, Spring 1936."

Mr. Meder: Ha, ha!

The Witness: Now, in Department 371 and in Department 385 we carry merchandise which is not dresses.

*By Mr. Albert.*

Q. So that— A. This is for dresses only. Now, in Departments 338, 358, 359, 367, and 369, all the merchandise we carry in those departments we consider as dresses.

Q. So that when you head up this Exhibit 508 and 509 as "Dresses"— A. It means dresses.

6492

Q. And the inclusion of Departments 371 and 385 refers only to the subdivision of those departments and not to the entire department? A. Only to dresses in those departments.

Q. And refers to the dress subdivision? A. Well, if you choose to call it a subdivision. We have no subdivision of the department.

Q. But you haven't included, in Commission's Exhibits 508 and 509, everything that is sold in Departments 371 and 358, have you—385, have you? A. No, sir.

*Louis B. Sappington—For Commission—Cross.*

6493

Q. So that to that extent the exhibits are not perfectly clear, are they? A. It pertains to dresses.

Mr. Martin: If your Honor please, I think the exhibit is perfectly clear. It is headed "Dresses" on both exhibits. The exhibit speaks for itself.

Mr. Albert: Yes, the exhibit is clear now.

*By Mr. Albert.*

Q. Now, Mr. Sappington, you have headed Commission's Exhibits 508 and 509, "Net Piece Sales"? A. That is correct.

Q. Will you turn to Commission's Exhibit 505, and will you turn to the second column? How is that headed up?

6494

A. Piece sales.

Q. What is the difference? A. No difference.

Q. Well, then, shouldn't you have headed the second column of Commission's Exhibit 505, "Net Piece Sales"?

Mr. Haycraft: Ha!

A. Possibly, but all of these figures are net. We deal only in net figures.

*By Mr. Albert.*

Q. Yes, but you are using two contrasting— A. No, there is no contrasting—

Q. —figures here. One is piece sales and one is net piece sales. A. They mean the same thing.

6495

Q. You didn't explain that, did you?

Mr. Albert: The witness shakes his shoulders.

The Witness: Took it for granted.

*By Mr. Albert.*

Q. You took it for granted? A. It is obvious to us. We deal only in net figures, every figure.

6496

*Louis B. Sappington—For Commission—Cross.*

Q. If you deal only in net figures, why was it necessary to head up Commission's Exhibit 508 as "Net Piece Sales?"

Mr. Haycraft: Ha! I object to that, Mr. Examiner; no sense to it, nonsensical and farcical, these questions are getting to be now.

Mr. Albert: If it please the Court, we have here two exhibits with different titles on them, and I assume that when two exhibits are placed into evidence, one with one title and one with another, that we are referring to different things.

Examiner Bennett: Will you let me see those exhibits, please?

6497

(The exhibits referred to were handed to the Examiner.)

Mr. Haycraft: That is 508 and 509.

Mr. Albert: Has your Honor 505?

Examiner Bennett: Yes.

Mr. Albert: The second column is headed "Piece Sales." Now, the figures which correspond to that is the difference between the figures presented on Commission's Exhibit 508 and the figures presented on Commission's Exhibit 509, but Commission's Exhibit 508 and 509 are headed "Net Piece Sales." I don't think that is clear unless it is brought out.

Examiner Bennett: What is the pending question?

6498

(The question was read.)

Examiner Bennett: You may answer.

A. It wasn't necessary. It could have been headed "Piece Sales."

*By Mr. Albert.*

Q. Now, Mr. Sappington—question withdrawn.

Mr. Albert: Mr. Martin, will you turn to page 3528 of the record? I am going to refer to that.

Mr. Martin: I haven't yesterday's copy of the record.

Mr. Albert: Do you want to follow it with me?

Mr. Post: Sit over here. Do you want to sit over here?

Mr. Martin: No, that is all right.

*By Mr. Albert.*

Q. Now, Mr. Sappington, referring to Commission's Exhibit 504. A. Yes, sir.

Q. What does the figure —59 in the second column, the first line, mean? A. The difference in piece sales for the month of February between 1935 and 1936.

6500

Q. Does that mean that you sold 59 less units in that entire department during that time? A. That is right.

Q. Now, I read you the question and answer with reference to that column propounded by Mr. Martin, and ask if you wish to change your testimony: "Now, what does the next line refer to? Answer: The next column referred to the piece sales, the difference in piece sales on the same basis. In other words, in February of 1936 we sold 59 more pieces in that department than we did in February, 1935?" A. That is wrong. That is a misstatement.

Q. You want to correct your statement to say that it is 59 less pieces, is that correct? A. 59 less pieces in 1936 than in February, 1935.

Q. All right.

6501

Mr. Martin: Is that all from that?

Mr. Albert: Yes.

*By Mr. Albert.*

Q. Now, Mr. Sappington, you have testified that you have made a study of the trend of sales. What elements did you take into consideration in making that study? A.

Stock on hand, advertising, sales help, all the factors that pertain to getting business in a retail establishment.

Q. And those factors enter into the question whether or not a department goes ahead of a prior year or falls behind a prior year; isn't that so? A. They may. They may, yes.

Q. There is no question of that in your mind, is there? A. No.

Q. Would you say that the physical space allotted to a department is also something to be taken into consideration? A. It might have an effect.

6503 Q. The promotional sales in a department? A. They might have an effect.

Q. The amount of mark-up? A. That might have an effect.

Q. The window space allotted to a department? A. That might have an effect on the volume.

Q. And all those things are the various elements which will or may affect the volume in a department, is that not so? A. Some of the elements.

Q. Of course, another very vital element to be taken into consideration is the change of the personnel of the department, if any; is that not so? A. Well, it depends on which personnel you mean.

6504 Q. Well, let us say, for instance, if a buyer changes there was one buyer in January and a new buyer in February; that may perhaps affect the volume of the department? A. It might; it might.

Q. And if there are any physical alterations made in the department, that also might affect the department, is that not so? A. It might help; it might hurt.

Q. At least, during the time that the physical alterations in a department are being made, would you say that that might tend toward a lessening of the efficiency of the department; that is, during the course of time when repairs were being made? A. I think that is a matter of opinion.



Q. Well, what is your opinion? A. Why, I have no definite opinion one way or another.

Q. How do you feel about it? A. In my experience I have seen departments that were moved about do an excellent business.

Q. Yes. A. Seemed to stimulate them.

Q. And— A. And we usually consider it a matter, if a department claims that it loses business because it is being moved or changed, we consider that a matter largely from the standpoint of alibi.

Q. I see. A. We don't take that seriously in our business.

Q. Yes. But I was not referring to that, was I, Mr. Sappington? A. Referring to what?

6506

Q. Was I referring to the fact that departments are being moved around, or was I referring to the fact that physical alterations and repairs are being made in a department where it is situated? A. Well, I understood that you meant moving around.

Q. Let me have your answer. A. Yes, physical alterations and moving around usually go hand in hand.

Q. I will go with you on that. But now let me have your opinion as to whether or not repairs and improvements, physical improvements being made in a department, in its particular situation in a store, will not affect the volume of that department, while alterations, physical improvements, and repairs are being made? A. Not necessarily.

6507

Q. So that with workmen working around the department, and tools cluttered around, and woodwork thrown around, and hammering going on, and show cases being torn down and replaced, you say that that would not affect the customer volume any in the department? A. We don't throw woodwork around, and we don't tear down show cases, and we don't tear plaster in the customer's—in front

6508

*Louis B. Sappington—For Commission—Cross.*

of a customer and that sort of thing. Where we have alterations, we handle them in a very orderly manner, and we do it to the least possible disturbance of business, and——

Q. But there is some disturbance? A. —and we rebuilt almost our entire store, and our volume increased steadily.

Q. Well— A. —and I can show you plenty of figures.

Q. Yes, but there was some disturbance, was there not?

A. There was some disturbance, but not necessarily a loss in business.

6509

Q. Now, with respect to Department 338, Mr. Sappington, where was that located in 1935? A. In 1935 Department 338 was located on the sixth floor of J. L. Hudson & Company, on the Woodward Avenue side of the building about 70 or 80 feet from the south wall.

Q. Was it located in the same place in 1936? A. Approximately.

Q. What do you mean by approximately? How far was it moved back, forward, or sideways? A. I could not tell you without looking at the plans.

Q. But it was not in its identical space, was it? A. Not in the exact location.

Q. Now, with respect to Department 358, where was that located in 1935? A. In just about the same place as 338.

Q. Both— A. They used the same room.

6510

Q. Both side by side? A. No, this way (indicating).

Q. Or were they inter— A. Intermingled.

Q. Intermingled? A. That is right.

Q. The dresses of the department were intermingled? A. No, some of the dresses were on one side of the room and some on the other. These two departments, 338 and 358, used two rooms. Certain price lines were in one room, certain price lines in another room, in both departments. Certain wardrobes were established in one department and certain wardrobes were established in the other department.

*Louis B. Sappington—For Commission—Cross:*

6511

Q. Was one whole side of the room Department 358, and the other whole side of the room Department 338?

A. I cannot tell you exactly.

Q. Or were the showcases intermingled? A. There weren't any showcases.

Q. What do you call them? A. Wardrobes.

Q. One wardrobe was 338 and one wardrobe 358, and perhaps two 358 and two 338? A. Perhaps; not always; there was no definite arrangement of stock.

Q. Do both departments handle the same price lines of merchandise? A. Approximately, yes, for the most part of the stock.

Q. What is the difference in the type of merchandise handled by the departments? A. One was women's and one was misses'. 6512

Q. One was women's and one was misses'? A. Yes.

Q. Was Department 358 moved in the same way? A. 358 and 338 were moved about together.

Q. Both together? A. Yes.

Q. They were not in the same space they had previously occupied, and you are not certain where they were moved to? A. Well, I know where they are now.

Q. Well, didn't you say that you had to have the plans in order to tell how far they were moved? A. You asked me how far, yes.

Q. Did you mean by that that you did not know the exact number of feet they were moved? A. That is right.

Q. Have you any rough idea? A. They are almost in exactly the same place that they were before. 6513

Q. But not in exactly the same place? A. Well, I can't tell you, I say, without looking at the plans.

Q. Right. A. But almost.

Q. Now, at any time during the period from February 1, 1935, to the present time, were Departments 338 and 358 in any other part of the store, or part of the floor, than where they are at the present time?

6514

*Louis B. Sappington—For Commission—Cross.*

Examiner Bennett: Well, I think we will assume that there has not been any thimble rigging of the departments.

Mr. Albert: If it please the Court, with all due respect, I do not think we can assume that, unless the witness testified that it has not been moved.

Examiner Bennett: Well, I am going to assume it.

Mr. Albert: Exception.

*By Mr. Albert.*

6515 Q. Have any alterations or repairs or improvements been made with respect to Departments 338 and 358, in so far as their physical condition is concerned?

Mr. Martin: Objected to, as being too indefinite. Let him fix a time.

Mr. Albert: Any time covered by the period to which your figures relate, Mr. Sappington.

Mr. Martin: I still object to it. Let him name the specific time to which he refers.

Examiner Bennett: Well, I will overrule the objection.

Read the question.

(Question read.)

A. What period do you mean, Mr.—

6516

*By Mr. Albert.*

Q. Any period. I am seeking information from you.  
A. I am not clear. Our schedule of improvements on the sixth floor covered quite a long period. Now, I cannot recall without consulting our schedules in our superintendent's office when the departments in which you are interested were affected. It is quite possible that Departments 338 and 358 were completed, all changes made, before the 1st of February.

Q. Yes., A. 1936. That is quite possible.

Q. But you are not certain? A. I am not certain, and I could not answer exactly without consulting the schedules which are undoubtedly available in our superintendent's office.

Q. Will you consult those schedules, please? A. I will consult them.

Q. And is—

Mr. Haycraft: Much ado about nothing.

Examiner Bennett: So far as I recall, you have the facts as to what was done with these departments for the last two years—that is, they seem to remain in practically the identical positions in J. L. Hudson Company's place of merchandising. Now, you are asking about fixing of a time with more definiteness when some sort of a slight change took place, and I am going to instruct the witness to do as he pleases about getting that information. I think it is of no particular consequence, and I am not going to put a burden on him if he does not feel like doing it.

6518

Mr. Albert: Exception.

*By Mr. Albert.*

Q. Mr. Sappington, is not it a matter of fact that the alterations and the improvements that have been made with respect to the departments in question have been of such a radical nature and of such a vital nature that merchandise men from all over the country have been visiting J. L. Hudson Company in order to examine these improvements?

6519

Mr. Martin: Objected to.

Mr. Albert: If it please the Court, I believe he has stated that there has been a little change made.

6520

*Louis B. Sappington—For Commission—Cross.*

I want to prove that these changes have been very vital and of quite a sizable amount, and must, of necessity, have had some effect upon their department.

Examiner Bennett: Well— I want to ask a question or two.

*By Examiner Bennett.*

6521

Q. Mr. Sappington, have you a recollection as to the approximate time that you began any changes which might have been made in those departments in the physical location and physical conditions under which they were operated? A. Yes, your Honor. I believe the changes were begun late in 1935. Whether that came in November or December, I am not certain, but I believe it was in November.

Q. Can you give the approximate date when they were finished? A. No, sir; I cannot do that without consulting records, because the departments were finished in rotation.

Q. Within a month or two? A. Yes, they were finished in rotation. There was a definite schedule applied as to when certain departments were to be completed.

Q. Would they run longer into 1936 than the period during which changes were made in 1935? A. Oh, no, they were completed by March, 1936.

Examiner Bennett: I see. All right.

6522

*By Mr. Albert.*

Q. As a matter of fact, Mr. Sappington, was not there a new department just completed last week in the store, and an announcement made of it in the newspapers?

Mr. Martin: Objected to.

Examiner Bennett: Sustained. The way the question was asked does not mean anything.

Mr. Albert: Exception.



*By Mr. Albert.*

Q. When did you finish air conditioning the departments, Mr. Sappington?

Mr. Martin: Objected to.

A. I couldn't tell you.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

*By Mr. Albert.*

Q. Is it fair to say, Mr. Sappington, that with respect to most of the figures that have been presented with regard to the various departments, without going specifically and technically into each department for each month, that most of the departments, if they fell behind during February, March and April, picked up in May and June—is that a fair statement? A. I couldn't answer that without looking up the records.

6524

Q. At the particular figures? A. Yes, I would have to consult the figures before answering that question.

Q. Well, would you say that if alterations were not completed generally until March of 1936, as you testified in answer to the Court's questions, and if the records reveal that there was a decrease up until March, in either your dollar volume or your total volume of sales, and that that decrease lessened in May and June, would you not say, in your opinion, from your experience in the dress line, that the alterations made in the departments possibly had some effect on the volume? A. Not necessarily, no, I wouldn't say that.

6525

Q. Very well. Now, Mr. Sappington, will you turn, please, to Commission's Exhibit 483-A again, and on the second page of that exhibit we find there a list of resources—do you follow me? A. Yes, sir.

Q. Is that a list of resources from whom merchandis was purchased during all of 1935? That does not cover any particular period of time, does it? A. It says, "Fall season of 1935."

Q. What period does that take in? A. That takes in from the 1st of August to the last of June.

Q. Is Joan Junior known under any other name? A. That is the only name that I know of.

Q. Now, will you show me, please, Joan Junior listed as a Guild house with whom you did business, or whose dresses you used during 1935, as contained in Commission's Exhibit 478-A? A. The list of Guild houses with whom we did business in 1935 was listed on a separate sheet, the same as the list of Guild houses with whom we did business in the suit department, as illustrated in Commission's Exhibit 478-B. In giving this information, or in submitting these exhibits, the list of Guild houses for the junior department was left out.

Q. All junior department? A. For the junior department. I found that in my file this morning.

Q. So that in comprising Commission's Exhibit 478 you omitted entirely dresses purchased in a particular department? A. Accidentally.

Q. Is that it? A. We accidentally—

Q. Well, accidentally or not, it is no less an error, is it?

Mr. Martin: Objected to.

A. It is not included.

Mr. Martin: Object to that statement.

Mr. Albert: Now—

Mr. Martin: And ask that it be stricken from the record. There is no evidence that it is in error at all, the witness stated that it was not offered in evidence—

Examiner Bennett: Well, it may stand.

Mr. Haycraft: Ruling?

Examiner Bennett: Let it stand.

*By Mr. Albert.*

Q. Now, Mr. Sappington, referring again to Commission's Exhibit 483-A, in the list of resources we find Dalton—do you see that? A. Yes.

Q. Am I correct in saying that the asterisk under the column heading "Guild" means that that is a Guild house?

A. That is what it seems to indicate, yes.

Q. Now, can you tell me from what source you determined that Dalton was a member of the Guild? A. Well, either from the buyer or from the merchandise manager, I do not know which, but that is the way we got most of our information about the members of the Guild, either—

Q. Did you not look at that list? A. Either from the list on the back of your—of the Guild stationery, or from our market contacts.

Q. Would you be good enough, please, to look at the list you referred to and see if you can find Dalton listed as a Guild house? A. No, it does not seem to be here.

Mr. Martin: What is that list you referred to?

The Witness: It is under the junior miss houses, I suppose; it is not under the junior miss houses or in the other listing.

*By Mr. Albert:*

Q. When the buyer told you—

Mr. Martin: What date does the list refer to?

The Witness: As near as I can tell, it refers to 1935.

Mr. Martin: What particular time in 1935?

The Witness: This letter is dated November 8.

6532

*Louis B. Sappington—For Commission—Cross.**By Mr. Albert.*

Q. When a buyer told you that a particular house was a Guild house, did you check that with the list to which you have referred to see if the buyer was correct? A. No, not always.

Q. You took the buyer's word for it, and you have taken the buyer's word for all the testimony that you have given that you have not had personal knowledge of, but that was communicated to you by the buyer; is that not so? A. Not necessarily.

6533

Q. As a matter of fact, Mr. Sappington, do you not know personally that Dalton is not a Guild house? A. I do not.

Q. And never was a Guild house? A. I do not.

Q. Now, Mr. Sappington, coming back to Commission's Exhibit 505, which refers to Department 369, you stated that column 2 refers to the net piece sales of the department. Is that correct, despite the fact that the column is headed "Piece Sales, 3536"?

Mr. Martin: Objected to. It is repetition; he is going over the same ground.

Mr. Albert: I wish to point out another discrepancy. Your Honor please. I am merely recalling to the witness' memory what he testified to.

Examiner Bennett: All right.

6534

A. Piece sales or net piece sales, they mean the same thing.

*By Mr. Albert.*

Q. Right. Now, turning to Commission's Exhibit 507, which is likewise headed "Analysis of Department 369." We find there the total piece sales; is that not right? A. That is right.

Q. But that designation of piece sales does not refer to the net piece sales of Department 369, but rather refers to the piece sales in the price lines indicated in that exhibit; is that not right? A. That is right.

Q. So that piece sales is used on Commission's Exhibit 505, in one sense, and is used on Commission's Exhibit 507, in another? A. Exhibit 505, the piece sales, meaning the piece sales for the whole department.

Q. Right. A. Commission's Exhibit 507, the piece sales mean the piece sales for the four cost prices set forth on that sheet.

Q. So that, as I said, the designation "Piece Sales" in Commission's Exhibit 505 is different than the designation "Piece Sales" in Commission's Exhibit 507?

Mr. Martin: That is objected to.

A. Piece sales are always piece sales, they cannot be anything else.

Q. Yes, but piece sales in Commission's Exhibit 505 refers to an analysis of Department 369, and in Commission's Exhibit 505 piece sales refers to an analysis of Department 369, meaning the net piece sales of the entire department, and piece sales referring to analysis of Department 369 on Commission's Exhibit 507—

Mr. Martin: Now—

By Mr. Albert.

Q. —refers solely to the price lines indicated, and not to the whole department as the exhibit is headed; is that not so?

Mr. Martin: I object to this long peroration on the part of counsel for the respondent. If your Honor please, the witness has stated two or three times exactly what these figures and designations

6538

*Louis B. Sappington—For Commission—Cross.*

refer to, and the exhibits speak perfectly clear for themselves. So, I object to any continuance of keeping on going into that same question, asking him the same question over again.

Mr. Albert: If it please the Court, I want to urge it, and I think it has been demonstrated now that black on an exhibit means one thing, in one place, and black on an exhibit referring to the same department means something else in another place, and how can anybody check up on these figures when terms are used indiscriminately and interchangeably with respect to the same terms which appear as to the same department.

6539

Mr. Martin: Objected to.

Examiner Bennett: All right. Objection sustained.

Mr. Albert: Exception.

*By Mr. Albert.*

Q. Mr. Sappington, do you know whether or not Department 338 occupied more physical space in 1936, or less physical space in 1936 than it did in 1935? A. No, sir. I don't know whether or not I found more or less. I know that it was adequate at both times.

6540

Q. So that physical space of Department 338 in reaching your conclusion or opinion as to what caused the difference between the volume in 1935 and 1936 is unknown to you? A. I am quite sure that the space had nothing to do with it. It was adequate at both times.

Q. Will you please answer my question? You don't know what the difference in the amount of physical space is, whether it had any effect or not?

Mr. Martin: Now, if your Honor please, I object to that. There hasn't been anything shown that there was any difference.



Examiner Bennett: Sustained.

Mr. Albert: He hasn't answered that that is so. That is exactly the answer I want.

Examiner Bennett: Sustained. There is no foundation for further questioning along that line. He doesn't know.

*By Mr. Albert.*

Q. Did Department 358 occupy more or less space during the period from February 1, 1935, to July, 1935, as contrasted with the period February 1, 1935, to July, 1936?

A. I do not know.

Q. You have no knowledge of that. And is the answer the same with respect to Department 359? A. I don't know the exact space occupied by any of the departments during 1935 or 19—or at present, the exact square feet. 6542

Q. I am not asking you that. I am asking you generally, did the departments—were the departments allotted more or less space in 1936 over the space that they were allotted in 1935?

Mr. Martin: Objected to. The witness has already answered that.

Mr. Albert: He has answered, your Honor, in a very quibbling fashion that he doesn't know it in feet and inches. I didn't ask him that.

Examiner Bennett: Yes. Well, he doesn't know.

Mr. Albert: Very well. 6543

Examiner Bennett: I will sustain an objection to further asking of that question.

*By Mr. Albert.*

Q. Mr. Sappington, do you know how many sales were held in Department 338 in the period of February, 1935, to July, 1935? A. The number of sales?

6544

*Louis B. Sappington—For Commission—Cross.*

Q. I am not referring to specific itemized sales of articles, Mr. Sappington. You understand that.

Examiner Bennett: You mean promotional sales?

*By Mr. Albert.*

Q. Promotional sales. A. No.

Q. Do you know how many promotional sales were held in Department 338 in the period of time referred to in 1936? A. No.

6545

Q. And do you know the information along that line for any of the departments? A. No.

Q. So that that element was not taken into consideration in reaching your opinion; is that right? A. Yes, it was taken into consideration in reaching my opinion.

Q. Do you know what the volume of stock was in Department 338 in the period referred to in 1935? That is, in my question which I asked you at the present time I am referring to the period for which you submitted figures. A. From February to July.

Q. From February to July, 1935, and from February to July, 1936. A. Yes.

Q. So that I won't repeat the time. A. (Witness nods head affirmatively.)

6546

Q. Do you know what the volume of stock was in Department 338 for that period? A. Well, I don't keep that figure in my head, but I have it with me.

Q. You have the figures with you at the present time? A. No, the price lines covered in the testimony, yes.

Q. Will you give us those figures, please? A. Department 338, first?

Q. If you please. A. Now, I would like to—our figures—I would like to make a slight explanation here, if I may?

Examiner Bennett: Yes.

The Witness: Please. Our figures on stocks are made up by weeks so that I will have to give you the weeks in February and the weeks in March, April, May, June, July and so forth.

*By Mr. Albert.*

Q. You haven't up to the present time, totaled those figures? A. Well, no. We don't total them. They are of no use to us totaled because we operate by weeks.

Q. Did you attempt to obtain or find any one figure demonstrating the volume of stock on hand? A. We have no figure that could do that. I couldn't give you any figure, single figure that would show our stock on hand.

6548

Q. In that department? A. No.

Q. Wouldn't the addition of the various weeks give you that? A. No.

Q. Wouldn't you be able to deduct, carry over of each week in order to get the figure? A. (Witness shakes head negatively) No.

Q. Couldn't you strike an average? A. No, average wouldn't mean anything.

Q. Well, then, as a matter of fact, wouldn't giving us the weekly figure not mean very much? A. Oh, yes, it means a great deal. It tells us exactly what we had. That is the shortest period of time to which we can bring these figures down.

6549

Q. But wouldn't the figure of a second week of a month also include, let us say, some dresses that were in the department in the first week? A. Oh, that is possible, but our—we—we develop these figures to show our ability to take care of business at these price lines as nearly as figures can by indicating the number of pieces we have to take care of our business during that week.

Q. Well, let's simplify it, Mr. Sappington. Well, now, Mr. Sappington, averages with respect to your volume in

6550

*Louis B. Sappington—For Commission—Cross:*

1936 you have testified wouldn't mean a thing; isn't that so? A. Oh, no.

Q. I mean, averaging each week in order to obtain a single figure? A. Well, averaging—

Q. For 1936? A. Average the figures, averaging the weekly stock figures indicating the number of pieces on hand.

Q. Yes. A. The weekly figures for any given period of time, a month or a season or a year, wouldn't mean anything to me.

Q. Right. That is what I thought you said. A. Yes.

6551

Q. But contrasting your average for 1936 and your average for 1935 would give you a proper figure to compute by? A. It wouldn't mean anything to me. It would be just a figure, as far as I am concerned.

Q. Wouldn't that in some way permit you to determine the sales trend? A. You mean that number of pieces on hand?

Q. No, your average number of pieces on hand in 1936 as contrasted with your average number of pieces on hand in 1935, each figure being computed by the same method. A. Oh, it would be a figure, but I don't know what it would mean.

Q. Very well. That is all I wanted to get. A. I have never seen such a figure.

Q. All right.

6552

Mr. Haycraft: Let the record show, Mr. Examiner, that the witness has not been allowed to answer the question as propounded to him about this stock on hand. He has the figures here ready to answer the question but the question has not been pressed.

*By Mr. Albert.*

Q. Now, Mr. Sappington, did you make any investigation of the amount of advertising by J. L. Hudson & Com-

pany with respect to the departments on hand as contrasted between 1935 and 1936? A. Yes, sir.

Q. What did you find? A. I can't answer that because I don't carry those figures in my head, but I have them here.

Q. Can you tell us approximately what you find? A. Oh, no, no, sir.

Q. Well, look at your figures and let us have them. A. Which departments?

Q. Department 369. A. Department 369. Which month? Right straight across?

Q. Yes. A. Our advertising figures and all the figures that we handle on advertising are on the basis of comparison and are in percentage. Department 369, January of 1936, 5.9 per cent.

6554

Q. What does that mean, Mr. Sappington? A. 5.9 per cent. of the sales.

Q. Right. A. In January, 1935, 5 per cent. of the sales; in February of 1936, 5.3 per cent. of the sales; in February of 1935, 3.1 per cent. of the sales; in March of 1936, 4.5 per cent. of the sales; March of 1935, 6.6 per cent. of the sales.

In each case the first figure I will give '35 in order to avoid repeating. The second figure is '36. I am wrong again. The first figure will be '36. The second figure will be '35.

March, 4.5, 6.6; April, 4.0, 5.0; May, 4.6, 3.3; June, 3.7, 3.2; July, 4.9, 3.5.

6555

Q. The first figure given in each case— A. The first figure given in each case is 1936; the second figure given in each case is 1935.

Q. Now, Mr. Sappington, do those figures refer to the entire Department 369, or do they refer to the various subdivisions with respect to which you have— A. The entire department.

6556

*Louis B. Sappington—For Commission—Cross.*

Q. The entire department? A. The entire department.

Q. So that in so far as their figures are concerned, there is no specific direct relationship to the particular department for which you have given figures? I mean, they are naturally included? A. Yes, in this department there happens to be because the figures we have given on these exhibits from \$8.75, \$10.75, \$11.75 and \$12.75 cost—

Q. Yes. A. —are the important price lines in this department, and are the price lines to which we restrict practically all of our advertising, I would say over—90 per cent. or over, except during clearance periods and our month-end periods, which is our clearance for each month.

6557

Q. Have you got any figures to prove that? A. Oh, I know that to be a fact.

Q. Well, now, then, if those price lines are the most important things in the department, and most of your business in that department is restricted to those price lines, and most of that merchandise is Guild merchandise why, in Commission's Exhibit 369, have you split your figures to include the total department of the net piece sale and haven't given us the figures with respect to those particular price lines?

Mr. Haycraft: Objected to that.

A. I don't believe—I am sorry—

6558

*By Mr. Albert.*

Q. Take a look at Commission's Exhibit 505.

Mr. Martin: You just referred to another exhibit. You referred to Exhibit 369. What exhibit are you referring to?

Examiner Bennett: Will you read the question? (Question read.)

Mr. Albert: Make that Exhibit 505.



Mr. Martin: I object to the question. It is unintelligible.

*By Mr. Albert.*

Q. With respect to your advertising, Mr. Sappington, you just stated that the advertising figures that you have presented apply to the particular price lines that you have—for which you have presented figures for that department, because those price lines comprise most of the business that is done in that department, and the rest of the business is very little; is not that so, and that is why—

Mr. Martin: No.

6560

*By Mr. Albert.*

Q.—your advertising figure covers the price lines for which figures have been presented?

Mr. Martin: I object to any such statement as that.

Mr. Albert: I am asking the witness if that is what he said.

Mr. Martin: Well, that is all right.

Mr. Albert: He can contradict me.

Mr. Martin: And I am objecting to the question. The witness did not state that. He testified that his advertising referred to the entire department, that in this particular instance those price lines were the main items in that particular department to which he was referring.

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Mr. Albert: And we—

Mr. Martin: And that, therefore, 90 per cent. of the advertising did directly refer to those particular lines.

Mr. Albert: And so I am asking him whether or not the merchandise in Department 369 not in-

6562

*Louis B. Sappington—For Commission—Cross.*

cluded in \$8.75, \$10.75, \$11.75 and \$12.75 is not an insignificant portion of that department.

Examiner Bennett: Is that your question now?

Mr. Albert: Yes.

Mr. Haycraft: We have no objection to that.

The Witness: Nothing is insignificant in Department 369. It may be a small proportion, but, after all, "small" is a relative term, and I told you that I couldn't tell you exactly without consulting the record. Now, I don't know how much additional merchandise there was in that department in February. I do know this, that our advertising policy with respect to Department 369 confines itself to the promotion for the most part, for the very large part, to the price lines \$8.75, \$10.75, \$11.75 and \$12.75 cost.

6563

*By Mr. Albert.*

Q. So that the figure in column 2 of Commission's Exhibit 505 in February, minus 57, some of that decrease is due to the fact that no advertising, or very little advertising effort was put behind the merchandise in Commission's Exhibit 505, which was not in the price lines \$8.75, \$10.75, \$11.75 and \$12.75; doesn't that follow? A. Very little advertising was put behind that merchandise in either 1935 or 1936. It has no bearing on the figure for either year. Our policy was just the same in 1935 as it was in 1936.

6564

Q. About how many units would you be leaving out of the computation if in computing piece sales for '35 and '36 in February, the Department 369 entirely omitted all price lines not in compass with the \$8.75 and \$12.75 price lines?

Mr. Martin: Objected to. He has already testified that he couldn't answer that question without the figures.

Examiner Bennett: All right. Sustained.

Mr. Albert: Exception.

Mr. Martin: Now, if your Honor please, let the record show that the figures, advertising figures, were produced for all departments at the request of Mr. Albert, and the question was not followed up.

Mr. Albert: Let the record also show, if it please the Court, that thus far the figures that have been presented are total figures for departments, and they have not been explained as to how they specifically apply to the subdivisions of various departments which have been presented here; and let the record also reveal that they don't show the price lines, the breakdown of the price lines for which figures have been submitted.

6566

Mr. Martin: I move that the statement be stricken as an incorrect statement of fact.

Examiner Bennett: I am going to let both statements stand. I think there is no special obligation on the part of the cross-examiner to put anything in that he does not see fit to put in, whether it is produced or not produced, because I do not think it means anything to call attention to that fact in the record.

*By Mr. Albert.*

Q. Mr. Sappington, you knew Mrs. Miller, did you not?

6567

A. I have met Mrs. Miller.

Q. She is the Guild shopper? A. Yes, sir.

Q. What was her customary method of operation in the store?

Mr. Martin: Objected to; no proper foundation.

Examiner Bennett: I will let him answer if he knows; if he doesn't know, he may say so.

6568

*Louis B. Sappington—For Commission—Cross.*

A. I don't believe I had enough contact with Mrs. Miller to know her method of operation. I saw her at certain times. I didn't see her regularly. Whether or not she did—she always did what she did when I saw her—I couldn't say.

*By Mr. Albert.*

Q. She was known to you, wasn't she, before she commenced her duties as a shopper of the Fashion Originators' Guild?

6569

Mr. Martin: Objected to as being irrelevant and immaterial, and having no bearing on this issue, also, outside of the scope of direct examination.

Mr. Albert: Does the Commission wish to withdraw the paragraph in its complaint in which it charges that Guild shoppers spied? Do you mean to tell me that the Commission's attorneys don't know what they are charging in their complaint?

Mr. Martin: Oh, yes, we know. Read the question.

6570

Mr. Albert: That is what the question has been about ever since we left New York, to demonstrate that the Guild shoppers openly went into the various retail establishments, made themselves known, and acted with the full consent and co-operation of every retailer and did nothing in an underhanded or spying manner.

Mr. Martin: I think if you will read the question back, you will see that you asked what she did before she was a shopper.

Mr. Albert: That wasn't the question at all. The question was—

Mr. Martin: Read the question.

Mr. Albert: Your Honor, please, the question was, "Did you know her before she was a shopper?"

Mr. Meder: Read the question back.

*Louis B. Sappington—For Commission—Cross.*

6571

Mr. Martin: Read the question back.

Examiner Bennett: Never mind. You may answer the question.

A. I did not. I did not know Mrs. Miller before she was a shopper for the Guild.

*By Mr. Albert.*

Q. Do you know whether or not she was known to J. L. Hudson Company?

Mr. Martin: Objected to.

*By Mr. Albert.*

6572

Q. Or to any executives or buyers in J. L. Hudson Company?

Mr. Martin: Objected to as irrelevant and immaterial and calling for the opinion of this witness, which he absolutely couldn't know.

Examiner Bennett: I will let him answer, if he knows; if he doesn't know, why, he may say so.

A. I don't know.

*By Mr. Albert.*

Q. Don't you know as a matter of fact that Mrs. Miller was at one time employed by J. L. Hudson Company?

6573

Mr. Martin: Objected to as being irrelevant and immaterial.

Examiner Bennett: I will let him answer.

A. I don't—I didn't know, no.

Examiner Bennett: We will take a recess for luncheon until 2.

(Whereupon, at 12.35 o'clock P. M., a recess was taken until 2 o'clock P. M. of the same day.)

6574

*Louis B. Sappington—For Commission—Cross.*

## AFTERNOON SESSION—2 P. M.

Examiner Bennett: Be in order, please. You may proceed.

*By Mr. Albert.*

Q. Mr. Sappington, in order to curtail cross-examination on this, can you answer this question: Would you say that Mrs. Miller's activities in shopping J. L. Hudson Company were not in any way surreptitious or secretive or underhanded, and that J. L. Hudson & Company were at all times generally aware of the fact that she was shopping the various departments?

6575

Mr. Martin: Objected to.

Examiner Bennett: Overruled. You may answer.

A. I would say that there were times when we didn't know what Mrs. Miller was in the store for, whether she was there to detect copies, whether she was there as a matter of general observation, or what; and there were often—after she had completed her work, she announced what she had come to find out and not when she first arrived.

*By Mr. Albert.*

Q. But you knew Mrs. Miller? You knew she was a shopper? She didn't conceal the fact at any time that she was the Guild shopper, did she? A. No, she didn't conceal the fact that she was a Guild shopper.

6576

Q. Do you mean by your previous answer that there were times when she might have come into the store and, without first seeing the buyer, started to shop the particular department? A. That is right.

Q. But after she shopped the department, she would generally speak to somebody about it, if she found anything? A. Sometimes she did.



Q. And as a general rule, you knew what she was doing and what she was there for? A. No. We didn't know whether she was there—what she was there for until she told us what she was there for.

Mr. Albert: May I have Commission's Exhibits 475, 480 and 486?

(The exhibits were handed to Mr. Albert.)

By Mr. Albert.

Q. Mr. Sappington, in connection with Commission's Exhibit 475, which is the declaration of co-operation, that declaration of co-operation is signed specifically by G. R. MacDonald for the basement store, is it not? A. That is right.

6578

Q. Mr. MacDonald is the man who was on the stand here yesterday; is he the man, the MacDonald that is referred to? A. Yes.

Q. This declaration of co-operation was to apply to your ready-to-wear department, isn't that so? A. That is right.

Q. In connection with Commission's Exhibit 475, was any letter sent, or any communication had with the Fashion Originators Guild of America prior to the signing of the declaration of co-operation? A. Before we signed the declaration of co-operation, we received a letter from the Guild or from Mr. Rentner, at least—from Mr. Rentner, on Guild stationery, stating the policy of the Guild.

Q. That is Commission's Exhibit 480? A. 480-A.

6579

Q. Right. A. 480-A, right.

Q. Was any communication from you—by "you" I mean either yourself personally or J. L. Hudson & Company, as you will—to the Fashion Originators Guild in answer to Commission's Exhibits 480-A and B? A. Not that I recall.

Q. And in addition, Commission's Exhibit 486, in evidence, is advice from the A.M.C. to you to sign the decla-

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*Louis B. Sappington—For Commission—Cross.*

ration of co-operation, is it not? I am referring to the telegram from Bergdahl to you personally, Commission's Exhibit 486. A. I think Exhibit 486 states what it states.

Q. Yes. Now, is there any restriction of any kind contained in Commission's Exhibit 475?

Mr. Martin: Objected to, your Honor. The exhibit is in evidence and will speak for itself.

Examiner Bennett: Read the question, please.  
(Question read.)

Examiner Bennett: I think I will sustain the objection unless it is made more specific.

6581 *By Mr. Albert.*

Q. In connection with the signing of Commission's Exhibit No. 475, being the declaration of co-operation of J. L. Hudson & Company, was there ever any request by J. L. Hudson & Company for any exceptions with respect thereto? A. Yes.

Q. Prior to the signing of the declaration of co-operation? A. Not prior to the signing.

Q. You received the letter of Mr. Rentner—withdrawn. The letter of Mr. Rentner, Commission's Exhibit 480, is dated June 16, isn't that so? A. That is so.

Q. Is it your understanding that you had until approximately July 5 to sign the declaration of co-operation if you wanted to sell the fall lines, roughly speaking? A. I suppose we could have waited until July 5. There was no penalty attached to our not waiting.

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Q. You have anticipated my next question, Mr. Sappington. And despite the fact that you had until July 5, and probably received Mr. Rentner's letter on or about June 17, your declaration of co-operation signed without exception was delivered to the Fashion Originators Guild on June 22; is that not so? A. I cannot answer as to that definitely. There is a date there, June 22, which I assume was put there by the Guild office.

Q. Have you any reason to believe that that declaration of co-operation was not signed and received by the Fashion Originators Guild at the time stated? A. No; I would say that is approximately correct.

Q. Right. Now, I do not suppose—and I mean no inference of any kind by this question—that J. L. Hudson affixes its signatures to any documents or representations of any kind without being sincere with respect thereto, does it? A. No, sir.

Q. And, of course, when you signed the declaration of co-operation you meant everything that was contained in there to be a statement of J. L. Hudson's policy; is not that so? A. Yes, sir.

Q. So that you believed, when you signed the declaration of co-operation, that the elimination of style piracy was for the protection of the public, didn't you?

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The Witness: Your Honor, it is difficult for me to answer that question "yes" or "no" without explaining how we felt when we signed this declaration of co-operation and sent it in to the Guild.

By Mr. Albert..

Q. Now, you have testified——

Mr. Martin: Now, just a minute. You asked him——

Mr. Albert: I will bring it out, Mr. Martin. If it please the Court——

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Examiner Bennett: The question isn't being pressed?

Mr. Albert: No.

Examiner Bennett: As I understand it.

Mr. Martin: All right, sir.

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*Louis B. Sappington—For Commission—Cross.**By Mr. Albert.*

Q. When you signed the declaration of co-operation, that was sincerely meant to be a declaration of policy of the J. L. Hudson & Company, was it not? A. Well, again I can't answer that question without explaining the background for our signing the declaration of co-operation with the Guild.

Q. When the J. L. Hudson Company signed the declaration of co-operation, was that not a sincere representation of the policy of J. L. Hudson & Company? I think that question can be answered "yes" or "no."

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Mr. Martin: If your Honor pleases, the witness has already testified that he could not answer that "yes" or "no," and he can answer it with explanations. He said that three times now.

Mr. Albert: Well, now, I will put it this way:

*By Mr. Albert.*

Q. Do you mean that in signing the declaration of co-operation, J. L. Hudson & Company departed from its policy of not signing anything which was not a sincere representation of its policy? A. I cannot make our position clear unless I am allowed to explain what we discussed and what we decided before we signed this declaration of co-operation.

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Q. In submitting the declaration of co-operation on direct examination you made no explanation thereof, did you? A. I don't know. My testimony is in the record.

Q. Well, as a matter of fact, don't you recall what you testified to? A. No, I don't remember it exactly.

Q. Well—

Mr. Martin: As a matter of fact, he was not asked the question.

*By Mr. Albert.*

Q. I do not want to know exactly. I want to know generally. Do you not know that you made no explanation of the point of whether or not J. L. Hudson & Company was sincere in their representation of the matter contained in the declaration of co-operation?

Mr. Martin: Objected to. That question was not asked of him.

Mr. Albert: In other words, if the lantern is not lit when it is swinging when the train is approaching, he is not going to testify that it wasn't lit when somebody gets hit when they cross the crossing, is that it?

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Mr. Martin: I object to that and ask that it be stricken from the record.

Examiner Bennett: It may be stricken.

*By Mr. Albert.*

Q. Mr. Sappington, in June of 1933 how many manufacturers would you say were members of the Fashion Originators Guild of America? A. I don't know.

Q. Do you recall, whether or not you tried to determine how many there were?

Mr. Martin: Objected to as immaterial and irrelevant.

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A. I believe the—

Mr. Albert: I am laying a foundation, if it please the Court. I believe the Court knows exactly where I am going and I think the witness knows.

Examiner Bennett: Overruled. You may answer.

A. I believe that the manufacturers that belonged to the Guild in 1933 were listed on the Guild stationery.



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*Louis B. Sappington—For Commission—Cross.**By Mr. Albert.*

Q. Quite right. A. And were listed on Mr. Renter's letter.

Q. Quite right. And did you make any tabulation of the number that there were? A. We were familiar with them at the time.

Q. No, I mean— A. No, I didn't count them.

Q. You didn't count them? A. I thought that I could count them at any time.

Q. Yes. Will you accept for the purpose of further questioning my statement that there are approximately thirty-five houses listed on that letterhead? A. I would like to see the letter.

Q. Thirty-five garment houses? A. I would like to see the letter.

Q. Go ahead and count them. A. I would say that is about right.

Q. Roughly? A. Yes.

Q. As a matter of fact, isn't it exactly thirty-five, Mr. Sappington? A. I don't know. I didn't count them. I just glanced at the list.

Q. How many manufacturers of garments would you say that there were in the industry in 1933, roughly speaking? A. All types of garments?

Q. In the price lines that we have been discussing. I do not want any definite figure, just an approximate figure? A. I wouldn't know.

Q. Would you say that there were 5,000? A. I wouldn't know.

Q. Would you say that there were 4,000? A. I wouldn't know.

Q. Would you say there were only thirty-five? A. I wouldn't know.

Q. Have you any idea whatsoever? A. I don't—

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*Louis B. Sappington—For Commission—Cross.*

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Mr. Martin: Objected to, your Honor. The witness has already said that he wouldn't know; that he had no idea.

*By Mr. Albert.*

Q. Won't you give me your estimate as divisional merchandise manager, or assistant, of J. L. Hudson & Company, where you have been employed now for the last number of years, about which you have testified that you have had complete charge of the industry, of the number?

Mr. Martin: Objected to.

*By Mr. Albert.*

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Q.—of the manufacturers?

Mr. Martin: He has not testified—

*By Mr. Albert.*

Q.—of the number of manufacturers that there were in June of 1933? A. I don't know.

Q. Did you make any investigation at that time when you received Mr. Rentner's letter of June 16? A. Any investigation of what?

Q. Of the number of manufacturers that there were in addition to the thirty-five listed on Commission's Exhibit 480? A. No.

Q. Well, now, Mr. Sappington, do you know how many members there are in the Fashion Originators' Guild of America to-day—manufacturers? A. No, I would not know that.

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Mr. Martin: Objected to as being immaterial and irrelevant as to how many manufacturers there are in the Guild to-day.

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*Louis B. Sappington—For Commission—Cross.**By Mr. Albert.*

Q. Do you know—

Examiner Bennett: I overrule the objection.

The Witness: Pardon me?

Examiner Bennett: I think you have answered.  
I say; I overrule the objection.*By Mr. Albert.*Q. Do you know that all the members of the Fashion  
Originators Guild at the present time were in business  
and operating in June of 1933? A. Pardon me, I did not  
6599 get the first part of the question. I am sorry.

(Question read.)

A. No, I do not.

Q. Without stretching your modesty too greatly, Mr.  
Sappington, would you not say that in June of 1933, J. L.  
Hudson Company was one of the leading department stores  
in the United States? A. That is right.Mr. Martin: Well, we are willing to stretch it,  
if necessary.*By Mr. Albert.*Q. Doing a great volume of business? A. That is cor-  
rect.6600 Q. And, as a matter of fact, with respect to the total  
volume of business done under one group, was not J. L.  
Hudson Company among the first three department stores  
in the United States? A. Well, I don't know, because I  
don't know what the other store figures are.Q. Well— A. I knew that it was somewhere near the  
top.

Q. Pretty nearly the top. A. Somewhere near the top.

Q. Perhaps the first five? A. Might be among the first  
five.

*Louis B. Sappington—For Commission—Cross.*

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Q. That is, you would be willing to include them in the first five, but you do not want to say it was the first three, but at least it was pretty nearly that close to the top? A. Approximately.

Q. Is that correct? A. Approximately.

Q. And in 1933 the J. I. Hudson Company were members of the Associated Merchandising Corporation, were they not? A. That is right.

Q. And at that time was not the combined sales of member stores of the A.M.C. in the neighborhood of \$300,000,000 annually? If you know. A. I don't know.

Q. Was it near that figure? A. I haven't any idea.

Q. Would you say it was \$200,000,000 annually? A. I don't recall ever having seen a combined figure for any year. 6602

Q. For any year. A. For the A.M.C. stores.

Q. Let me read to you from this letterhead of the Associated Merchandising Corporation the following: "The combined sales of member stores represent nearly \$300,000,000 annually."

Mr. Martin: Objected to. Is that letter in evidence?

Mr. Albert: Yes.

Mr. Martin: What is it?

Mr. Albert: It is the photostatic copy.

Mr. Martin: I will see what it is.

6603

*By Mr. Albert.*

Q. Would you now change your testimony to the effect that you have never seen a statement with respect to the combined sales? A. I don't recall ever having seen any such statement.

Q. Well, you have received letters from the Associated Merchandising Corporation, have you not? A. Oh, yes.

6604

*Louis B. Sappington—For Commission—Cross.*

Q. Did you receive a copy of the Phil Reilly letter that went out to all associated stores of the Associated Merchandising Corporation approximately February 14, 1936?

A. To whom was the letter addressed?

Mr. Martin: Objected to. There was no evidence in the record that this witness ever received any such letter from Mr. Reilly, and I move that any reference to that letter be stricken.

Examiner Bennett: Well, unless—

*By Mr. Albert.*

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Q. Have you ever seen—

Mr. Martin: Just a second. Let his Honor rule.

Examiner Bennett: I am going to let him go ahead and see if it develops anything. It certainly is not relevant up to this point.

Mr. Albert: Quite right, your Honor, but I think it will soon appear to be quite relevant.

*By Mr. Albert.*

Q. And have you ever seen any figures with respect to the capital of the Associated Merchandising Corporation?

Mr. Martin: Objected to as immaterial and irrelevant to the issues in this case; not proper cross-examination.

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Examiner Bennett: Yes. Well, I will sustain the objection. I will grant the motion to strike the whole matter from the record.

*By Mr. Albert.*

Q. Did you ever see any letterhead of the A.M.C. containing the statement "Capital, \$1,000,000"?

Mr. Martin: I understood his Honor granted the motion to strike all of this.

*Louis B. Sappington—For Commission—Cross.*

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Examiner Bennett: Yes.

Mr. Albert: I ask your Honor to bear with me for just a few more questions so that I can tie all this up. I cannot jump into a subject from the middle, and I respectfully ask—

Examiner Bennett: I understand. I thought I had indulged you very liberally in time to get somewhere.

Mr. Albert: May I ask your Honor's further indulgence for just one or two more questions in order that I may tie up the matter which I am driving at in a manner that I deem best?

Examiner Bennett: Well, I will vacate the motion to strike, if that is what you are after, until you ask some more questions in an attempt to connect it up with some thing relevant to the inquiry.

The Witness: The question please?

(Question read.)

Mr. Martin: Objected to as irrelevant and immaterial whether he ever saw it or not.

Examiner Bennett: Sustained.

6608

*By Mr. Albert.*

Q. Do you know what the capital of the A.M.C. is?

Mr. Martin: Objected to, as irrelevant and immaterial.

Examiner Bennett: Sustained.

Mr. Albert: Exception, your Honor.

Examiner Bennett: Yes.

6609

*By Mr. Albert.*

Q. Now, Mr. Sappington, coming back to Commission's Exhibit 475, a declaration of co-operation, you personally signed it also, did you not? A. Yes, sir.

(There was a discussion off the record.)



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*Louis B. Sappington—For Commission—Cross.**By Mr. Albert.*

Q. That was signed by you, was it not, on behalf of the better dress department, so-called? A. Yes, sir.

Q. Now, you have stated that you cannot answer my question as to whether or not you were sincere in signing this declaration of co-operation in supporting the statement that the principle of eliminating style piracy was for the protection of the public, have you not?

Mr. Martin: Now, just a moment, if your Honor please, before he answers this question. I now renew my motion to strike all of these other questions and answers.

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Examiner Bennett: All right, they may be stricken.

Mr. Albert: If it please the Court, I have not as yet tied it up.

Examiner Bennett: Well, you have gone to a different subject altogether.

Mr. Albert: If your Honor please, the questions that I have propounded are directed at precisely what I am now in the middle of.

Mr. Martin: I fail to see any connection.

Examiner Bennett: It is too mysterious for me. I have not got to it.

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Mr. Albert: If it please the Court, I am very grateful if it is mysterious to everybody. I hope it is mysterious to the witness also, but I do not think it is.

Examiner Bennett: All right.

Mr. Albert: May I explain to your Honor off the record?

Examiner Bennett: Why, yes, if you care to do it, I would be glad to have you do it. I will ask the attorneys to be present.

(There was a discussion off the record.)



*Louis B. Sappington—For Commission—Cross.*

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Examiner Bennett: All right, if you bring that out. On the showing of the attorney as to what he is going to try to prove, why, I will permit further questions.

*By Mr. Albert.*

Q. Will you answer the last question?

The Witness: What is the question?

(Question read.)

A. I cannot answer questions regarding our signing the declaration of co-operation unless I can be given the opportunity to explain.

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Q. Well, what is your explanation? A. All right. We considered inasmuch as this was a different arrangement from anything that we had ever had experience with before that the declaration of co-operation with the Guild, and the whole Guild idea was largely an experiment—we were sympathetic with the ideals which had been outlined to us—we were will to go along and to try out the idea, in so far as that willingness to go along is concerned we were sincere. The ideas that we received from Mr. Rentner's letter, and the ideas that were given to us regarding the Fashion Originators Guild in its original conception we thought were sufficiently worth while for us to co-operate in attempting to find out whether or not it would work. That was our whole idea in signing the declaration of co-operation. Mr. Rentner stated in his letter that the Guild was proceeding on the principles that the Guild comprised all the outstanding style houses in the country. That was a very significant statement. If the Guild comprised all the outstanding style houses in the country we were interested in doing a style business, the Guild was trying out a problem which it claimed was important to style houses. We were willing to see what it was all

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*Louis B. Sappington—For Commission—Cross.*

about, and in so far as that willingness is concerned we were decidedly sincere.

Q. Is that your complete answer, Mr. Sappington? A. Yes.

Q. So that you agree that style piracy is an evil in the industry, do you not?

Mr. Martin: Objected to. He did not make any such statement at all. It also is irrelevant and immaterial as to whether he thinks style piracy is an evil or not.

Examiner Bennett: I understand that that is not in controversy under the theory of the Commission.

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Mr. Albert: Do I understand, then, if it please the Court, that the Commission concedes that style piracy is an evil in the industry?

Mr. Haycraft: The statement is in the record as to what the Commission's position is.

Examiner Bennett: That is a matter for the attorneys. I do not know what their theory is, except as I gather it from what they say, that this is not—and from the pleadings—that this is not an issue, that it assumes that it is an evil or assumes that it is not an evil—they still attack—

Mr. Albert: Your Honor please—

Examiner Bennett: They still attack the methods—

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Mr. Albert: I wish to—

Examiner Bennett: —of the respondents.

Mr. Albert: Yes. But may I say this, your Honor? That with all due respect, I do not believe that in the light of what has just been said, that the Commission's attorneys have made their position quite clear on the record with respect to whether or not style piracy is considered to be an evil, and, very frankly, I must throw myself upon the mercy

*Louis B. Sappington—For Commission—Cross.*

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of the Court, and, frankly, upon the mercy of the Commission's attorneys and state that I am ignorant of their position, and I respectfully beg of the Court, and of them, that if their position has been stated, that it be stated for my benefit, because I frankly have no knowledge of their position on that subject whatsoever, and I believe we can save a great deal of time if it is repeated as to what it is. I do not see why there should be such a mystery about it.

Mr. Haycraft: I am not going to be put in the position of repeating anything, Mr. Examiner. Counsel for the respondent was present when the statement was made on previous occasions. He can refer to the record and find out what it was. So far as concession is concerned, there is no concession as to style piracy, or anything else. We merely stated what we conceded to be the issues, and that was not one of the issues. The record will stand as to what was stated before. I have no wish to repeat it, because I might not use the exact same wording I used before, and there might be some misunderstanding from that very fact, so I would rather stand on the record as it is now; but there is no concession. I make that statement, that there is no concession on our part that style piracy in the industry is not an evil. It is not an issue.

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Mr. Albert: With all due respect to the Commission's attorney, if it please the Court, I do not intend to be bound by their contentions as to what the issues are in the case. Style piracy, whether an evil or not, is a legal question, and unless information is brought out with respect—except the Commission makes a concession with respect thereto, I respectfully submit that when we got up on the

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*Louis B. Sappington—For Commission—Cross.*

record, if we have to, that there is nothing in the record as to whether the program is an evil one or not.

Mr. Haycraft: It is not a legal question at all.

Mr. Feldman: I beg to differ on that, your Honor. The question of whether or not a method of competition is fair or unfair involves a number of facts. The inference drawn from those facts is a pure question of law. The facts that go to make up or go to determine whether or not a particular practice is a competitive evil, therefore, becomes not only an issue, but becomes a question upon which the Court ultimately must determine, and therefore the problem necessarily becomes a legal one.

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Examiner Bennett: I think in view of what seems to be a difference of opinion, or, rather, a radical difference of opinion, as to what is and what is not an evil, whether this thing is or is not in issue, that is, style piracy, I think I will permit the cross-examiner to go into that to a certain extent.

Mr. Albert: Thank you, your Honor.

Examiner Bennett: You may answer. Overruled.

The Witness: May I have the question?

(The question was read.)

Mr. Albert: Yes.

Mr. Haycraft: Objected to.

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Mr. Martin: Now, I make the further objection that he is not limiting it as to time or as to price lines.

Mr. Albert: If it please the Court, I don't quite see whether—withdrawn. I don't quite see the distinction Mr. Martin is making. Stealing is stealing at any time, whether it be of a two-cent piece or of a five-dollar piece or of a million dollars.

*Louis B. Sappington—For Commission—Cross.*

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Mr. Martin: The question of time as of 1933 might be one thing, might be an evil, and in 1936 it might not be an evil, so I—

Mr. Albert: To save time, I will put it this way:

*By Mr. Albert.*

Q. Mr. Sappington, was style piracy an evil in 1933?

A. I don't know because I don't know. I am not sure that there were any styles to pirate. I am not sure that there was any originality in the styles that were claimed to have been stolen. I think that whole question is very much in doubt.

Q. Are you a member of the N.R.D.G.A., Mr. Sappington? 6626

Mr. Martin: Objected to, immaterial and irrelevant as to whether he is a member of the N.R.D.G.A., and it has no bearing on the issues in this case.

Examiner Bennett: What is the N.R.D.G.A.?

Mr. Martin: The National Retail Dry Goods Association.

Examiner Bennett: Yes. I will sustain the objection. I think we are going too far afield.

*By Mr. Albert.*

Q. So that I may understand you perfectly, Mr. Sappington, as I understand it, you have no opinion one way or another as to whether or not style piracy is an evil in the industry? A. I have no opinion because I am not sure that there are any original styles to steal. 6627

Mr. Martin: Now—

*By Mr. Albert.*

Q. But you wouldn't say that there were not, would you?



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*Louis B. Sappington—For Commission—Cross.*

Mr. Martin: Excuse me. Just a minute, Mr. Albert. If your Honor please, at this time I would like to renew my motion to strike all of the evidence relative to A.M.C. Counsel has been allowed full opportunity; it was stricken once and then he came around and made explanation to your Honor and was allowed to proceed and he is going on and on and he still has not shown any relevancy to those questions, and I renew my motion and respectfully ask that that evidence be stricken out.

Examiner Bennett: Are you through with this line, Mr. Albert?

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Mr. Albert: No, your Honor. We are still on this declaration of co-operation, and he still hasn't explained it, and I still have to cross-examine him on it.

Mr. Martin: The A.M.C. was in first and now the N.R.D.G.A.

Mr. Albert: That was a subdivision of this particular question that came up as a result of an answer that he gave to the question.

Examiner Bennett: I am going to let you go ahead for a while. You are repeating the ground that you have been over. You are going over it again.

Mr. Martin: What was your Honor's ruling?

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Examiner Bennett: I am going to indulge him further. He says he is not through.

*By Mr. Albert.*

Q. What did you mean, Mr. Sappington, when you said that you were sympathetic with the ideals of the F.O.G.A. when you signed the declaration of co-operation? A. Well, in June, 1933, we felt that if the formation of the Guild could contribute anything that was of value to the better dress business, we would be interested in seeing what could be done, if anything.



Q. What did you expect it to contribute? A. We didn't know. We thought the platform of the Guild was highly idealistic, somewhat indefinite. We didn't know what they would do.

Q. You mean idealistic in the sense it was attempting to elevate the ethics of the industry? A. Idealistic in the sense that it was impractical.

Q. In all phases of it? A. Well, mostly, yes.

Q. And despite the fact that you believed that it was impractical, and by that you mean you didn't believe it would work, you, nevertheless, signed the declaration of co-operation? A. We had to.

Q. What do you mean by you had to? A. If we didn't we couldn't see the lines of these houses which Mr. Rentner says comprised all of the outstanding style houses in the country when they opened their lines for our buyers on the 5th of July.

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Q. Do you mean to tell me that J. L. Hudson & Company, one of the five leading department stores in the country in 1933, a member of the A.M.C., with the backing of the A.M.C.—

Mr. Martin: Objected to. There is no evidence here that they have the backing of the A.M.C.

Mr. Albert: May I be permitted to finish my question, your Honor?

Examiner Bennett: Yes, go ahead.

The Witness: May I have the question read back?

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(The question was read as follows: "Q. Do you mean to tell me that J. L. Hudson & Company, one of the five leading department stores in the country in 1933, a member of the A.M.C., with the backing of the A.M.C.—"

By Mr. Albert.

Q. (Continuing) —with the ability to bring pressure to bear in 1933 of the A.M.C., as is being done at the present

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*Louis B. Sappington—For Commission—Cross.*

time, was forced to sign the declaration of co-operation when in 1933 there were only thirty-five manufacturers in the Guild?

Mr. Martin: I object to this question. I move that the same be stricken. There is no evidence here to show that they had the backing of the A.M.C. at that time or that they have at this time, and that they had these tremendous sources and could bring pressure to bear on these manufacturers. I think the question is highly improper and ask that it be stricken.

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Examiner Bennett: Yes. Well, I am going to overrule your objection and let him answer; if he has an answer. You may answer.

The Witness: May I have the question, please?

(The Reporter read the question as follows: "Do you mean to tell me that J. L. Hudson & Company, one of the five leading department stores in the country in 1933, a member of the A.M.C., with the backing of the A.M.C., with the ability to bring pressure to bear in 1933 of the A.M.C., as is being done at the present time, was forced to sign the declaration of co-operation when in 1933 there were only thirty-five manufacturers in the Guild?")

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Mr. Martin: Now, if your Honor please, I submit that that part certainly about the pressure being brought at the present time is highly improper.

Examiner Bennett: Well, if the witness disagrees with the statement of facts so that he can't answer, why, that is another thing. Let him say so.

The Witness: Your Honor, that seems to be quite an involved question. There are so many elements included there, I don't believe I can answer such a question.

*By Mr. Albert:*

Q. Take them one at a time, Mr. Witness, and answer each one in there. A. Will you ask them that way? (

Mr. Albert: Will you repeat the question, Mr. Stenographer?

(The question was read again.)

A. We considered this a matter of individual store—we considered this an individual store problem. We were interested in seeing what would be developed, what the Guild could do, what the Guild wanted to do. We were advised by our A.M.C. office as indicated in the telegram submitted in Exhibit—

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Mr. Meder: 486.

A. (Continuing) —486, that they recommended, after full consideration, that we sign up on exactly the same basis.

Q. Is that your answer, Mr. Sappington? A. That is the answer.

Mr. Albert: Now I ask that the answer be stricken out as not responsive and ask that he answer my question.

Examiner Bennett: Denied.

*By Mr. Albert:*

Q. What did you think the Guild was going to do, Mr. Sappington, when they established this program? A. I didn't know then and I didn't know at any time.

Q. You don't mean to tell me that you joined an organization without knowing what they were going to do, did you, or what their policy was or what their program was?

A. I didn't know. My experience has shown that I definitely didn't know.

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*Louis B. Sappington—For Commission—Cross.*

Q. I am not speaking now specifically; I am speaking generally. You mean to tell me that you didn't know what the program of the Guild was when you signed the declaration of co-operation? A. I read the statement of the declaration of co-operation and we read Mr. Rentner's letter.

Q. Yes. A. And in so far therein we knew what the plan of the Guild was at that time. We didn't know that it was going to be changed; we didn't know how it was going to be administered.

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Q. Now, at that time what did you conceive to be the program of the Guild? A. At that time we conceived that the program of the Guild was to attempt to stop style piracy.

Q. Did you agree with that—

Mr. Martin: Wait a minute.

A. Down to—

Mr. Martin: Let him finish his answer.

A. Down to \$10.75 cost.

*By Mr. Albert.*

Q. Yes. A. In dresses.

6642

Q. Is there anything in the declaration of co-operation that restricts the Guild program or plan of \$10.75 and up?

A. No; there is nothing—there is no restrictive—

Q. And you stated that you got your information with respect to the program from a reading of the declaration of co-operation, didn't you?

Mr. Martin: That is not a correct statement, your Honor.

The Witness: Reading of the declaration of co-operation.

*Louis B. Sappington—For Commission—Cross.*

6643

*By Mr. Albert.*

Q. And the Rentner letter? A. And the Rentner letter.

Q. And the declaration of co-operation is specifically signed by G. R. MacDonald of the basement store, isn't that so?

Mr. Martin: Objected to. That has already been testified to.

Examiner Bennett: Sustained.

*By Mr. Albert.*

Q. Now, Mr. Sappington, will you be good enough to look at Commission's Exhibit 494-A? A. Yes, sir. (Witness refers to Exhibit 494-A.) 6644

Q. Have you 494-A? A. 494-A, yes, sir.

Q. Did you take any steps in 1933 similar to those mentioned in Commission's Exhibit 494-A, which is a letter from Mr. Webber to Mr. Bergdahl, and which states, "In the meantime, I do not believe it would be wise for us to take steps to organize other retailers in opposition to this movement"? A. We had no occasion to, then.

Q. By that do you mean that there was nothing that you feared in 1933? A. There was nothing in 1933. The Guild had not been organized; the Guild had not administered its affairs; the Guild had not enlarged its scope; the Guild had not done things that we had no conception it would do. We went in—

Q. So that, despite the fact—

Mr. Martin: Let him finish his answer.

6645

Q. (Continuing) —that all of those matters concerning the Fashion Originators Guild at that time, and the fact that it was in its infancy, you still say that you were forced to sign the declaration of co-operation?



6646

*Louis B. Sappington—For Commission—Cross.*

Mr. Martin: Just a second. Mr. Sappington, had you finished your former answer?

The Witness: No, I hadn't at the time.

Mr. Martin: Go ahead and finish it, then.

The Witness: Could I have my answer, please? (The answer was read.)

The Witness: We went in with a clear field. We have had no disagreement at the time. We were willing to see what was going to happen. We were willing to go along.

*By Mr. Albert.*

6647

Q. So that you voluntarily signed the declaration of co-operation, didn't you? A. We did not. We would not have signed the declaration of co-operation if we had not been told that we could not see the lines on the 5th of July. Now, this matter came up in the latter part of 1932. We didn't know anything the whole first half of 1933. We heard from Mr. Rentner on this proposition as early as December, 1933. We only took action when we were told that if we didn't take action we couldn't see the lines on the 5th of July.

Q. But you took no steps whatsoever in an attempt to counteract what you thought was pressure being brought to bear upon you in asking you to sign the declaration of co-operation? A. There was nothing to counteract.

6648

Q. Now, Mr.— A. Because, as I stated before, the Guild—

Q. That is all, Mr. Sappington. That is satisfactory. A. The Guild had not been formed.

Q. Now, Mr. Sappington, did J. L. Hudson & Company at any time register any protest to the Fashion Originators Guild with respect to its policy and the furtherance of its policy of protecting styles during the year, the balance of the year 1933 and the year 1934? A. I couldn't answer that question without going over our correspondence.



Q. Well, didn't you go over your correspondence before you came in here? A. Not completely. There might be something in it that I didn't see.

Q. Well, after all, you are here to make a good case for the Commission; aren't you?

Mr. Martin: Now, if your Honor please, I respectfully object to any such insinuation as that. The witness is here—

Mr. Albert: It is more than insinuation, your Honor.

Mr. Martin: Will you just wait a second?

Mr. Albert: I am sorry.

Mr. Martin: Until I go ahead, sir? The witness is here under subpoena of the Commission to testify. He has been sworn to tell the truth. He has been frank and above-board in answer to all questions that have been asked him, and I resent the implication on the part of counsel for the respondents that this witness is here to deliberately make a case for the Commission with the implications contained in his statement, and I move that the same be physically expunged from this record. 6650

Mr. Albert: If it please the Court, there isn't anyone in the dress industry that doesn't know that J. L. Hudson Company is opposed to the Guild and will do everything in its power—properly—I don't in any way—

Mr. Martin: Well, your question— 6651

Mr. Albert: —mean to impugn their methods to destroy the Guild, for their own selfish purposes.

Mr. Martin: I move that that statement be stricken.

Examiner Bennett: Will you read the first statement?

(The last question was read.)

6652

*Louis B. Sappington—For Commission—Cross.*

Examiner Bennett: I will grant the motion to strike both statements.

Mr. Martin: On the last motion, I ask that that be stricken, too.

Examiner Bennett: Well, I have. I granted your motion.

Mr. Martin: Yes, sir.

Examiner Bennett: To strike both statements.

*By Mr. Albert.*

Q. Isn't it a fact, Mr. Sappington, that J. L. Hudson & Company would like to see the Guild disbanded?

6653

Mr. Martin: Objected to.

Mr. Albert: If it please the Court, am I not permitted to show the bias of this witness?

Examiner Bennett: Yes, certainly. Overruled.

Mr. Martin: All right, sir. Go ahead, sir.

A. No, that isn't the fact.

Mr. Albert: Ha, ha, ha!

*By Mr. Albert.*

6654

Q. You amaze me, Mr. Sappington. Would you like to sign the declaration of co-operation? A. Ha! Because we do not agree with the way the affairs of an organization are administered, or because we do not agree with their present principles, that doesn't mean we would like to see them wiped out.

Q. Will you concede that in so far as the program of the Guild generally is concerned, aside from the method of its administration, that it is a good program for the industry? A. I won't concede anything without advice.

Q. I am asking you for your opinion, not for someone else's. We have seen what happens when you get figures

*Louis B. Sappington—For Commission—Cross.*

6655

from someone else. You don't want to rely on those any more, do you? A. My opinion doesn't count. It is the opinion of the J. L. Hudson Company.

Q. I would like to have your opinion as assistant merchandising manager. You are on the stand. You have given some very widespread opinions here to-day. You are not afraid to tell us your opinion, are you?

Mr. Martin: If your Honor please, the witness has testified that he has no opinion. I think that is a complete answer.

Mr. Albert: If it please the Court, there has been absolutely no such testimony by the witness. He has referred us, not to subordinates this time, to superiors, his superiors. Now, if Mr. Dowley and Mr. Webber will be called to testify as to the Guild's program, we may leave Mr. Sappington off on this proposition.

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Mr. Martin: It is not relevant in this case in any way.

Mr. Albert: I think it is quite relevant, your Honor. Your Honor has already ruled on that point.

Examiner Bennett: He is trying to show prejudice, as I understand.

Mr. Albert: Certainly, your Honor.

Examiner Bennett: If you can show it, it is all right.

6657

*By Mr. Albert.*

Q. What is your opinion, Mr. Sappington?

Mr. Martin: I renew my motion, your Honor. I thought you just ruled on it, that he had answered.

Examiner Bennett: I think that he said that he had no opinion. That is my understanding.

6658

*Louis B. Sappington—For Commission—Cross.*

Mr. Albert: I respectfully differ, if it please the Court. He merely said he couldn't give it without advice.

Examiner Bennett: Go ahead and find out whether he has an opinion.

*By Mr. Albert.*

Q. Have you an opinion? A. Of what?

Q. What have we been talking about, Mr. Sappington? Of the program of the Guild. A. The present program of the Guild?

6659

Q. The general program of the Guild to eliminate style piracy, aside from the question of its physical administration.

Mr. Martin: Objected to as to form.

*By Mr. Albert.*

Q. Have you an opinion of the program of the Guild? A. The present program?

Q. Yes. I mean the program for eliminating style piracy is the same as it was when they started.

Mr. Martin: I object.

*By Mr. Albert.*

6660

Q. Aside from the question of the administration of that program, now, all my question is directed at is, what is your opinion of the program of the Fashion Originators Guild of eliminating style piracy, and not of the method of doing it?

Mr. Martin: Objected to as not being a question, a separable question. It is not in proper form and it is objected to.

Mr. Albert: It is quite separable, your Honor. I think it is quite obvious.

Examiner Bennett: I think the question is too narrow in its scope. I think if you want to ask him for an opinion you will have to cover the policies and the methods of the Guild.

*By Mr. Albert.*

Q. You have stated, Mr. Sappington, that J. L. Hudson has no desire to eliminate the Fashion Originators Guild because of the fact that you differ merely in the administration of the program, rather than with the Guild program. Is that a fair statement of your previous testimony? A. I said that because the J. L. Hudson Company might differ with the methods or the scope or the changes in a program does not necessarily mean that the J. L. Hudson Company would like to wipe out the administrators of the program or the people connected with the program. 6662

Q. All right. Now, let me ask you this question: Does J. L. Hudson Company subscribe to the policy of eliminating style piracy?

Mr. Martin: Objected to, your Honor. He has testified that he couldn't tell that, that that was a question of policy.

Mr. Albert: Here is an executive of this firm.

Mr. Martin: Just a minute.

Mr. Albert: If it please the Court, who is offered here instead of his superiors as having full knowledge of the policies of J. L. Hudson & Company. I think it is a perfectly competent question to ask this witness. 6663

Examiner Bennett: I think in view of his answer, I think he has answered two or three times saying that he was not certain, that he was uncertain that there was any such a thing as style piracy, that

6664

*Louis B. Sappington—For Commission—Cross.*

there are any styles which are original and can be pirated. I wouldn't think he would be able to answer that question in view of that.

*By Mr. Albert.*

Q. Well, then, let me ask you this, Mr. Sappington: Does the attempted elimination of style piracy benefit J. L. Hudson & Company in lines above \$10.75? A. I don't know.

Q. Is there any benefit obtained by J. L. Hudson & Company from the attempted protection of styles above \$10.75?

6665

Mr. Martin: He has testified that he doesn't know.

Examiner Bennett: Well, I will let him answer. He may answer.

A. I don't know.

*By Mr. Albert.*

Q. Have you discussed this matter with your superiors in J. L. Hudson & Company as to the effect of the Guild program on the better dresses? A. Why, as I recall, I think we have discussed from time to time the Guild policies; whether we have discussed the effect or not, I couldn't answer definitely.

6666

Q. Is it your opinion that the better price lines need protection from the evils of copying? A. I don't know what the better price lines need. They need more value, I know that.

Q. Well, confining yourself to answering my question—

Mr. Martin: He has already—

Q. (Continuing) —would you say that they need protection?



*Louis B. Sappington—For Commission—Cross.*

- 6667

Mr. Martin: He has already told you that he didn't have any opinion on it.

A. I don't know what they need.

Mr. Albert: Well, now, may I see Commission's Exhibit 491-A?

*By Mr. Albert.*

Q. Mr. Sappington, to what were you referring when you wrote to Mr. Bergdahl on May 9, 1935: "I believe the idea is sound and that it could be worked"? What did you mean by that? A. That is not the whole statement,

6668

Mr. Martin: Is that the complete statement?

The Witness: I mean, it would be rather difficult for me to say what I meant unless you read the entire sentence.

*By Mr. Albert.*

Q. Very well, I will read the whole statement: "But not by the methods the organization is now attempting to follow." What was their stand about the program as aside from the methods? A. Well, at that time, May, 1935, it was still my belief that there was something to the idea as originally proposed by the Guild, of attempting to control the copying of high-priced dresses. If, as I have said before, the high-priced dresses are actually copied from an original style which has always—which I have always doubted.

6669

Q. You personally? A. Yes, I personally.

Q. That does not reflect the opinion of the other executives of the store, though, does it? A. Hah! I don't know about that.

Q. You mean to tell me you have not discussed this situation with the other executives? A. That particular opinion?

6670

*Louis B. Sappington—For Commission—Cross.*

Q. Yes. A. No.

Q. You have not discussed with Mr. Dowley the question of whether or not style piracy is an evil in the industry?

Mr. Martin: I object to the question as immaterial.

A. The question was whether or not their original styles were copied, is the statement which I made. Now, I have told Mr. Dowley what I thought. I don't know what he thinks.

Q. What do you mean when you refuse to admit that style piracy exists, and that you are doubtful as to whether or not original styles can be copied?

6671

Mr. Martin: Now, your Honor please, I object to that. He has not refused to admit that style piracy exists. His statement was he did not know whether there were any originals or not.

Mr. Albert: I am sorry. Has there been a ruling?

Mr. Martin: I object to the question.

Examiner Bennett: Yes, I will let him answer.

The Witness: Do I answer? Read the question, please.

Examiner Bennett: He may answer.

6672

Mr. Martin: There are two questions, your Honor. I object to the form of the question. Let him ask it in proper form.

Examiner Bennett: Well, if the witness questions the accuracy of the facts, why, of course, he can modify his answer.

Mr. Albert: Thank you, your Honor.

Examiner Bennett: Go ahead and answer, if you have an answer.

A. I—in the first place, I don't—I doubt the authenticity of the idea, or I doubt the fact that the styles, which

are claimed to be original styles. are original. Now, if the styles are not original, and if they in themselves are adaptations or copies, then you do not have a copy when those styles are reproduced. In other words, I doubt—I question the fundamental principle underlying the whole style piracy idea, which is that the originals are actually originals.

*By Mr. Albert:*

Q. Have you ever been to manufacturers— A. Oh, yes.

Q. —Mr. Sappington? A. Yes, indeed.

Q. Were you there when they were preparing their lines? A. Well, I imagine so. I imagine that many of the times I have been in the showrooms. 6674

Q. Do you not— A. There have been lines prepared; they are always developing new numbers for their lines.

Q. New numbers? A. New numbers.

Q. By that, do you mean original numbers? A. I mean different numbers.

Q. Different numbers. Do you know approximately the course of designing a line?

Mr. Martin: Objected to as irrelevant and immaterial, far afield, your Honor.

Mr. Albert: If the Court please, this witness has testified, unsolicited and voluntarily, his opinion that there is no such thing as style piracy.

Mr. Haycraft: Unsolicited? 6675

Mr. Albert: That there is no such thing as an original design to be copied. I want to find out what he knows about the business.

Mr. Martin: If your Honor please, I respectfully submit that the witness has not testified—he says that according to his—counsel has said— He has said that he has serious doubts, and he does not know that there is such a thing as an original design. He has not testified that there was not one.

6676

*Louis B. Sappington—For Commission—Cross.*

Mr. Albert: As I understood, the witness does not know one way or another whether there was such a thing as an original style.

Mr. Martin: Nor has he volunteered anything. Everything he has given has been at the questioning of counsel for the respondent.

Mr. Albert: Yes, but his original statement was volunteered thereto——

Mr. Martin: No——

Mr. Albert: I have tried to break it down.

Mr. Martin: His original statement was in answer to a direct statement by you.

6677

Examiner Bennett: I will sustain an objection to that particular question.

*By Mr. Albert.*

Q. Let me ask you this, Mr. Sappington: Aside from the question as to whether or not certain manufacturers made up original designs, is it true that certain other manufacturers copy the designs that are made up by these first manufacturers?

6678

Mr. Martin: Now, I object to this line of questioning, your Honor. This was brought out by counsel on cross-examination. He asked this witness direct questions, which he answered, and now he is seeking to cross-examine him on his own cross-examination——

Mr. Albert: Not in the least, if it please the Court.

Mr. Martin: —and I respectfully suggest to the Court, and urge, that these questions are improper and should be excluded.

Mr. Albert: Not in the least, if it please the Court. This witness has tendered, he has put into evidence certain instruments without explaining

Louis B. Sappington—For Commission—Cross.

6679

them. He has attempted to attack the Guild upon its question of program as regards style piracy, and I believe that I should be permitted to cross-examine this hostile witness upon that point and find out what he knows.

Mr. Haycraft: Hostile to whom?

Examiner Bennett: Yes. Well, I am going to sustain the objection. I think we are getting into a new field that is of doubtful relevancy.

Mr. Albert: Exception.

By Mr. Albert.

Q. Now, Mr. Sappington, I show you Respondents' Exhibit 44, which is an advertisement in "Women's Wear Daily," dated Tuesday, July 11, 1933, announcing the co-operation of certain manufacturers— 6680

Mr. Martin: Just a second, if you please.

(A document was marked for identification Respondents' Exhibit 44.)

By Mr. Albert.

Q. Did you see this advertisement in "Women's Wear," Mr. Sappington?

Mr. Martin: Now, if your Honor please, I object to any—

Examiner Bennett: Better ask him in the ordinary way. 6681

Mr. Martin: I further wish to call to your Honor's attention that we have here what purports to be a photostatic copy of something, and I would request that the original be produced if they want to have it identified.

6682

*Louis B. Sappington—For Commission—Cross.**By Mr. Albert.*

Q. Well, now, Mr. Sappington, did you see an advertisement appearing in the "Women's Wear Daily" on Tuesday, July 11, 1933—

Mr. Martin: Objected to.

*By Mr. Albert.*

Q. —containing the information as set forth in Respondents' Exhibit 44?

Mr. Martin: I object to the form of the question, your Honor.

6683

Mr. Albert: I have not asked him to identify any—the originality of any exhibit—I am asking him as regards the information contained in the exhibit, which I am showing him to refresh his recollection, and I can show him anything to refresh his recollection.

Mr. Martin: That is not in evidence, and I object to the form of the question.

Mr. Albert: I cannot very well put it in evidence, your Honor, before the witness gives me the very simple answer as to whether or not he has seen it.

Mr. Martin: You did not ask him that.

6684

Mr. Albert: I certainly did ask him that, I asked it three times.

Mr. Martin: You know how to get a paper identified if you want it identified, Mr. Albert. I suggest that you ask him the proper questions.

Examiner Bennett: I will sustain the objection as to the form of the question.

Mr. Albert: Exception.



*Louis B. Sappington—For Commission—Cross.*

6665

*By Mr. Albert.*

Q. Mr. Sappington, you are aware of the fact—

Examiner Bennett: Take a recess of ten minutes.  
(There was a short recess taken.)

Mr. Meder: May we quit to-day at 4.30 o'clock, your Honor? The witness has an important engagement.

Examiner Bennett: Yes, I think so.

*By Mr. Albert.*

Q. Now, Mr. Sappington, you were vitally interested, were you not, in following the program of the Guild in order to determine whether or not it was going to be practical, is that not so? A. Well, we did not hear much from the Guild for quite a long time after June of 1933, except—

6686

Q. What do you mean by "quite a long time"?

Mr. Haycraft: Let him finish.

Mr. Martin: Let him finish his answer.

Mr. Albert: I am sorry.

A. —except in Mr. Post's visits occasionally, and our contacts in New York with manufacturers and—

*By Mr. Albert.*

Q. Did you not make any attempt to obtain information from the Guild as to how things were going? A. No, the information that we got came to us, I would say, gratuitously. We were not policing it, and it was not our program, it was not our proposition, and we were pretty doggone busy—excuse me—we were very busy taking care of our own jobs.

6687

Q. As a matter of fact, Mr. Sappington, despite the fact of your testimony, as to your interest in seeing how practical the program would be, you did not even attend

6688

*Louis B. Sappington—For Commission—Cross.*

one of the meetings here in Detroit with respect to the program of the Guild; is that not so?

Mr. Martin: That is objected to. His testimony is, as I understand it, that they were willing to give it a trial.

*By Mr. Albert.*

Q. Will you answer my question, Mr. Sappington?

Examiner Bennett: I will let him answer.

The Witness: Shall I answer?

Examiner Bennett: You may answer.

6689

A. We did not attend the meeting to which you refer, which I imagine is the second meeting which Mr. Post held.

Q. Is that just an example of the old saying, that there are none so blind as those who will not see?

Mr. Martin: Objected to.

Examiner Bennett: Sustained.

Mr. Martin: I move it be stricken.

The Witness: Your Honor, I did not finish my reply to the first question.

Examiner Bennett: All right, go ahead and answer it.

6690

A. We did not attend the second meeting because it was our understanding that the second meeting was to be about practically about the same matters that was covered in the first meeting.

*By Mr. Albert.*

Q. Well, now, when you say "we"—

Mr. Meder: Have you finished?

*By Mr. Albert.*

Q. I am sorry. Have you finished? A. And we were not—"we"—I say "we;" I mean the J. L. Hudson Company, and myself included, because I was the person who was informed as to the subject-matter to be covered in the second meeting.

Q. Yes. A. We were not interested in the subject-matter covered in the first meeting. We understood that the subject-matter covered—and the meeting was extremely long, lasting from about 12 to 3 o'clock——

Mr. Martin: Go ahead.

A. (Continued) —it took up a great deal of our time. We understood that the subject-matter for the second meeting was to be similar, if not identical, to the subject-matter for the first meeting. We had heard it; we were not interested; it involved the formation of a local guild. That is the reason we did not attend the second meeting.

6692

Q. Now, are you through with your answer? A. Yes.

Q. Now, in the course of that answer you stated, I believe, generally, that you were the man who was concerned with the Guild program, generally speaking?

Mr. Martin: He did not make——

A. I happen to be the person.

Mr. Martin: —that statement at all. He said he was——

Mr. Albert: I am asking him for an explanation.

6693

The Witness: I happen to be the person who was told what was going to be discussed in the second meeting.

*By Mr. Albert.*

Q. I see. Very well. Now, was there anybody in J. L. Hudson & Company who attempted to follow the program

6694

*Louis B. Sappington—For Commission—Cross.*

of the Guild to see whether or not it was being worked practically?

Mr. Martin: I think he has already testified to that, your Honor.

Mr. Albert: Not in the slightest, your Honor.

Mr. Martin: Yes, he has, and made the statement—

Examiner Bennett: All right, let him answer. Overruled.

Mr. Martin: All right, go ahead, sir.

6695

A. We were all—by “we,” I mean the buyers, the divisional merchandise managers, Mr. Simmons and Mr. Dunham and myself—were all interested in the Guild program. We were receiving information from time to time in the course of business as to what was being done. We were not—we did not constitute an investigating committee. We accepted the information that was given to us—

*By Mr. Albert:*

Q. Now— A. —as I said before, it was not our program, it was not our organization; we were simply going along. When information was given to us, we took the information.

6696

Q. And you were going along without knowing where you were going, aside from what you heard? A. Well, we received correspondence from the Guild and our buyers were in the market talking with the Guild members and Guild affiliates.

Q. Now, did you, in August, 1933, when you were still a new member of the Guild, or, rather, when you were still a new co-operating retailer, did you learn that the Dress Creators League of America, Inc., the organization of \$10.50 manufacturers in the dress industry, were collaborating with the registry division of the Fashion Orig-

*Louis B. Sappington—For Commission—Cross.*

6697

inators Guild of America, Inc.? A. We may have. I cannot answer definitely. That is quite a long time ago.

Q. You testified pretty thoroughly and specifically with respect to a great many things that have occurred in that period of time. A. I cannot testify specifically as to that.

Q. And you do not know whether or not the \$10.50 manufacturers co-operated with the Guild in August of 1933? A. No, I don't.

Q. Now, all of these people who were interested—of all of these people who were interested in the Guild program that you testified to, the buyers, your assistant divisional merchandise manager, your executives who were superior to you—did not any of them tell you, or did you not learn through them, or did you not learn gratuitously—is the word you used—or did you not learn from any source whatsoever in the dress industry, that in August of 1933 the \$10.50 manufacturers started to co-operate with the Guild?

6698

Mr. Martin: Objected to. He has already answered the question. It is needless repetition.

Mr. Albert: This witness, if your Honor please, has been very precise in his definition of words, and I have now made the question most conclusive.

Mr. Martin: He has answered it pretty inclusively.

Examiner Bennett: Read the question.

(Question read.)

6699

A. No, it is my recollection that the \$10.50 manufacturers, or \$10.75 manufacturers, and I believe they are the same group, that the discussion regarding them becoming affiliated with the Guild took place early in 1935.

*By Mr. Albert.*

Q. Now, and that there was no discussion with them before that time? A. I don't recall anything specific.

6700

*Louis B. Sappington—For Commission—Cross.*

Q. "Women's Wear" is the Bible of the dress industry, is it not, Mr. Sappington?

Mr. Martin: Objected to.

Mr. Albert: I am laying a foundation, your Honor.

Examiner Bennett: All right.

*By Mr. Albert.*

Q. Is it not? A. Well, "Women's Wear" is a trade paper.

6701

Q. I mean, every well informed buyer, and divisional merchandise manager, and general merchandise manager, who wants to learn anything about the industry, and keep informed of the times in the dress industry, reads "Women's Wear" rather assiduously, is that not so? A. I don't know.

Q. Well, do you not? A. Well, I think inasmuch as Mr. Shaffner is in the room, and a representative of "Women's Wear," it is rather embarrassing for me to answer that question.

Q. Do you think it was embarrassing for you to state that Mr. Shaffner told you first about the red carding?

A. Not embarrassing to me; it might have been embarrassing to Mr. Shaffner.

Q. And you state that he told you personally about that, is that so? A. I did not state that; no, sir.

6702

Q. But that it was learned first through him; is that it?

A. Through a representative of "Women's Wear," I stated.

Q. Well, did you learn it through a representative of "Women's Wear"? A. I did not.

Q. In other words, you were told by someone else in the organization that they had learned it through a representative of "Women's Wear"?

Mr. Martin: Your Honor please, that has been gone into thoroughly, and I do not see any purpose in going—



*Louis B. Sappington—For Commission—Cross.*

6703

Mr. Albert: Very well, your Honor, we just went off on a slight tangent.

Mr. Martin: Only a slight one?

*By Mr. Albert.*

Q. Now, Mr. Sappington, I show you Respondents' Exhibit 45—

Mr. Haycraft: Identification?

Mr. Martin: For identification?

(A document was marked for identification Respondents' Exhibit 45.)

6704

*By Mr. Albert.*

Q. —for Identification, and ask you whether or not you ever were apprised of the information contained in that advertisement of "Women's Wear"?

Mr. Martin: Objected to. This exhibit is not in evidence.

Mr. Albert: I am trying to lay a foundation for it, your Honor.

Mr. Martin: Well, that is no way to do it. You know the proper way to do it. We just went over that once.

Examiner Bennett: I will sustain the objection in the form of the question as you ask it. You can find out whether he can identify it, and if he can, let him do it; if he cannot, have it identified in the proper way.

6705

*By Mr. Albert.*

Q. Mr. Sappington, can you identify Respondents' Exhibit 45 for Identification—

Mr. Martin: Now—

6706

*Louis B. Sappington—For Commission—Cross.*

Q. —as—

Mr. Martin: Excuse me. I beg your pardon. I thought you had finished, sir.

*By Mr. Albert.*

Q. —as an advertisement appearing in "Women's Wear Daily" on Wednesday, August 9, 1933?

Mr. Martin: Now, if your Honor please, that is a photostatic copy. I call for the original of the document.

6707

Mr. Albert: All right. Do I understand that it is Mr. Martin's procedure hereafter that he refuses to accept the respondents' offer of a photostatic copy of a document upon the ground that he wants to see the original?

Mr. Martin: You understand it as to this particular exhibit.

Mr. Albert: Well, will Mr. Martin accept the production of a photostatic copy at this time upon my assurance, and upon condition that we will produce for him the original advertisement as it appeared in "Women's Wear," which is at the present time back at our office in New York?

Mr. Martin: That is fine, if you will produce the original.

6708

Examiner Bennett: All right.

Mr. Albert: Thank you.

*By Examiner Bennett.*

Q. Can you identify that paper? A. Well, it looks to be a photostatic copy of a page in "Women's Wear." It is about the way the "Women's Wear" pages look.

Q. Do you recognize it as something you have seen before?

Mr. Albert: Do you think I was asking you to identify that—

Mr. Haycraft: I object to that.

Mr. Albert: —copy of the "Women's Wear," and their model and design, Mr. Sappington?

Mr. Martin: I object.

Examiner Bennett: I am asking him if he has seen it before.

The Witness: I cannot testify that I have seen it before; no, sir.

Examiner Bennett: I see. All right.

*By Mr. Albert.*

6710

Q. Did you become aware in any way of the information that is set forth on that exhibit that is marked Respondents' Exhibit 45 for Identification?

Mr. Martin: Objected to. This document has not been identified.

Examiner Bennett: Yes. Well, I shall sustain an objection—

Mr. Albert: If it please the Court—

Examiner Bennett: He says he cannot testify that he has seen it before. I do not see how you can refresh his recollection by something he has never seen before.

*By Mr. Albert.*

6711

Q. Do you mean by that, Mr. Sappington, that you never saw this particular ad?

Mr. Martin: Objected to.

Mr. Albert: I am trying to qualify him.

Mr. Martin: That particular ad is not in evidence.

Examiner Bennett: Well, if you want to ask him about something or other, if you have some fact

6712

*Louis B. Sappington—For Commission—Cross.*

that is within his knowledge, which you wish to develop, please ask him about that particular fact. That paper evidently does not refresh his recollection, and evidently cannot possibly refresh his recollection.

*By Mr. Albert.*

Q. Let me ask you just one more question, Mr. Sappington. Were you aware of the fact that on or about August, 1933, the Dress Creators League of America, Inc., which comprises the \$10.50 manufacturers, announced their collaboration with the registry division of the Fashion Originators Guild of America, Inc.?

6713

Mr. Martin: Objected to. He has already testified that he did not know that.

Mr. Albert: If that is his testimony, I will accept it, your Honor.

Examiner Bennett: Go ahead. Answer it, please, if you know.

A. I was not aware of the circumstance mentioned as of that date.

Examiner Bennett: Well, if you don't know, say you don't.

The Witness: I was not aware of the circumstance you mentioned as of that date.

6714

*By Mr. Albert.*

Q. Well, of what date were you aware of it? A. I cannot tell you exactly. Some time during the fall of 1933.

*By Mr. Albert.*

Q. Now, Mr. Sappington, what did you mean, and what is your knowledge about the way copies are adjudged to be

such in pursuance of the Guild program? A. Well, the Guild had a committee called the Piracy Committee, I believe.

Q. Yes. A. And in some instances, at least, whether or not in all I couldn't say, the dresses under discussion were referred to this Piracy Committee.

Q. Yes. A. I understand that in some cases there were on this committee dress manufacturers who were members of the Guild. Whether that was true in all cases or not, I do not know. It was my understanding that in some cases that was true. I do not know whether all cases under dispute were referred to this Piracy Committee or not. I do not know whether they ruled in every instance where a copy was referred to us. I assumed it was—it was my belief that this Piracy Committee was a part of the Guild organization. So that when I stated that the Guild adjudged certain dresses to be copies, I assumed that the workings of this committee were carried, or the functions of this committee were carried out under the Guild administration, that the committee was a part of it.

6716

Q. Is it your belief that this Piracy Committee is a permanent committee? A. I didn't think it was a permanent committee.

Q. Or is it constantly changing? A. I thought the personnel varied.

Q. Constantly changing? A. I do not know how constantly.

Q. Did you know, Mr. Sappington, that the A.M.C. buyers served on that committee, and Mr. Bergdahl also served on that committee?

6717

Mr. Martin: Objected to as immaterial.

Mr. Albert: It is the last question on the point, your Honor.

Mr. Martin: Object to it.

Examiner Bennett: I will let him answer if it is the last question.

6718

*Louis B. Sappington—For Commission—Cross.*

A. I don't know that Mr. Bergdahl served on that committee, or that an A.M.C. buyer served on that committee. I knew that some buyers had served on that committee, some buyers from some retail stores.

*By Mr. Albert.*

Q. And aside from this general information about which you have no certain knowledge, you do not know how the Piracy Committee worked; is that correct? You know nothing more about the Piracy Committee than what you have told us? Let me put it that way? A. I know that in some cases the Piracy Committee called in the manufacturers involved for a statement.

6719

Q. I do not mean as regards as how they actually operated. I mean as to their set-up, as to what you have told us about their set-up, you know nothing further about that? A. No, I know nothing further.

Examiner Bennett: All right. Now, that is a closed chapter.

*By Mr. Albert.*

Q. Now, Mr. Sappington, when was it that you received this information from a representative of "Women's Wear" to the effect that you had been red carded? A. I believe it was on the morning of the 14th of February, 1936.

6720

Q. And the letter which you received from the Fashion Originators Guild returning to you your declaration of co-operation is dated February 14, 1936, and I believe you testified that you received it on the 15th; isn't that so? A. (Witness nods head affirmatively.) Yes, sir.

Q. Did you make any reply to that letter of February 14, 1936? A. We didn't have—

Q. You are forgetting. A. Yes. Yes, sir. Excuse me.

Q. You didn't have an opportunity to reply to that other letter? A. That is right. Thank you.



*Louis B. Sappington—For Commission—Cross.*

6721

Q. You are welcome. You did make a reply to the letter of February 14? A. Yes. There is a letter in the exhibits from Mr. Richard Webber. I don't recall the date, but it is in the—it is one of the exhibits.

Q. You are referring to Commission's Exhibit 477, dated February 27? A. Oh, that is right. We didn't make any reply to it.

Q. No reply whatsoever? A. When our declaration was returned.

Q. Right. A. Not at that time.

Q. And from February 14 until February 27, J. L. Hudson Company made no inquiry of the Fashion Originators Guild with respect to the red carding?

6722

Mr. Martin: Objected to as being irrelevant and immaterial. They had already been red carded.

Examiner Bennett: I will let him answer. Overruled.

Mr. Martin: You may answer.

Examiner Bennett: Is that true?

Mr. Martin: Read the question.

The Witness: May I have the question? I am not quite clear on it.

(Question read.)

A. Yes, I believe we did during—

*By Mr. Albert.*

6723

Q. Written communication I said, Mr. Sappington. A. Communication?

Mr. Martin: You didn't say communication.

The Witness: You said inquiry, I believe.

*By Mr. Albert.*

Q. Well, consider that I have amended my question to mean written communication. A. Not that I know of.

6724

*Louis B. Sappington—For Commission—Cross.*

Q. Now, what letter is that that you were referring to, and you thought I was questioning about when you started to say that you hadn't had time to answer? A. Well, that is one of the Commission's—

Q. Just what is the date of the letter? A. It is in the exhibits.

Q. You were so conscious of it I thought you knew it offhand. I am trying to find it, and I cannot find the number.

Mr. Martin: The letter of February 11, wasn't it?

6725

The Witness: It ought to be somewhere around February 11.

Mr. Martin: Yes. Here it is. It is Exhibit 499-A. Is that the one?

The Witness: It is not in this book.

Mr. Martin: 499. It is a letter from Post to Webber.

The Witness: That is right, February 11.

*By Mr. Albert.*

Q. That is Commission's Exhibit 499-A? A. 499-A.

Q. That is dated February 11, 1936; is that right? A. Yes, sir.

Q. And between February 12, 1936, and February 15, 1936, you wrote no letter in response to the letter which  
6726 you received from the Fashion Originators Guild of America, dated February 11, 1936; isn't that so?

Mr. Martin: That is objected to as an incorrect statement. He has already testified that he had knowledge of the red carding as early as February 14, the morning of February 14. Now he is coming over to the date of the time when he received their letter from the Guild on the 15th.

*Louis B. Sappington—For Commission—Cross.*

6727

Mr. Albert: I am not referring to that. Permit me to ask my question the way I want to. I am referring to his answer to this letter.

Mr. Martin: I have no objection—

Examiner Bennett: Read the question.

(Question read.)

Mr. Martin: Now, very obviously what he is trying to prove is that there was a time between the receipt of that original letter and red carding in which he could communicate. Now, the facts are different because he has already testified that on the morning of February 14 he received the notification that they were red carded, and Mr. Albert is now trying to take two days' advantage.

6728

Examiner Bennett: Yes. Well, the record shows all of that. You may answer. Overruled.

The Witness: We did not reply to the letter because in the last paragraph Mr. Post stated: "We have no doubt that you share our desire to have this matter settled one way or another during the current week. Now, if you will refer to a calendar of 1935 you will see that the current week extends beyond the day on which we were red carded. We assumed that this letter gave us an opportunity to reply up to Saturday night, which would be the close of the current week, so that if a reply was in the hands of the Fashion Originators Guild on the following Monday we would be fulfilling the request made by Mr. Post."

6729

I believe that the 14th of February comes on Thursday.

Mr. Martin: Here is a calendar.

The Witness: Here is a calendar—no, this is '36. Is there a '35? Oh, excuse me.

Mr. Feldman: You want '36.

6736

*Louis B. Sappington—For Commission—Cross?*

The Witness: February 14 is on a Friday. We considered that from the statement made in Mr. Post's letter that we had until Saturday night to discuss the matter and make our reply.

Now, inasmuch as we were informed of the red carding on Friday morning, we assumed that the committee or the decision must have been made extremely early Friday morning or the previous day on Thursday, which was the 13th. Now, the reason we didn't reply is that action was taken before we had an opportunity to reply, because the letter definitely states that we could have during the current week.

6731

*By Mr. Albert.*

Q. Now, did you inquire immediately upon receipt of this return of your declaration; in the light of your opinion that you had until Saturday, as to whether or not the Guild or the committee would not permit you to answer by Saturday? You went along on an assumption on a very important thing of red carding, which you stated has affected your business, and which I believe you, as divisional merchandise manager, could have foreseen—do you mean to tell me that you made no inquiry to determine whether or not you could not be given more time to decide whether you wished to continue to co-operate?

6732

Mr. Martin: If your Honor please, I object to any such statement that the witness went along on the assumption, when it had the written physical evidence that they had been red carded.

Examiner Bennett: Yes. I will sustain the objection.

Mr. Martin: And they had returned his declaration.

Examiner Bennett: I will sustain an objection to that.

*Louis B. Sappington—For Commission—Cross.*

6733

*By Mr. Albert.*

Q. Mr. Sappington, when did you first learn that the manufacturers had been apprised of the fact that you were red carded? A. When our buyers went, and Mr. Simmons, the assistant divisional merchandise manager, went into the market.

Q. When? A. I can't give you that exact date, but Mr. Simmons can.

Q. Approximately when? A. I should say about February 16, 19—

Q. The following week? A. Yes.

Q. Isn't that so? A. That is right.

6734

*By Mr. Albert.*

Q. There wasn't anything additional, any additional information that you had with respect to red carding except Commission's Exhibit 476; isn't that so, Mr. Sappington? A. No, sir.

Q. Is that so, Mr. Sappington? A. No, sir. We had additional information.

Q. Now, you know, do you not, that manufacturers are not apprised of the fact that a retailer has been returned, his declaration of co-operation has been returned, until some time after the declaration of co-operation has been returned; don't you?

Mr. Martin: How would he know that?

Mr. Albert: I am asking him if he knows.

6735

A. No.

*By Mr. Albert.*

Q. Don't you know, as a matter of fact, that it takes some time to get these red cards out to all of the manufacturers, during which time while you may have your

6736

*Louis B. Sappington—For Commission—Cross.*

declaration of co-operation returned to you, the manufacturers are not aware of it as yet; don't you know that?

A. No.

Q. Then do I understand it to be your opinion that as regards the letter of February 14, 1936, that was an irrevocable determination as far as you were concerned, that you were red carded? A. Yes.

6737

Q. Then why did you write the letter of February 27, in which you create a doubt as to whether or not you thought that that was a definite irrevocable red carding when you say, "If your aforementioned letter did not have the effect of severing our relationship completely, please consider this letter as doing so"? A. We wanted to be certain.

Q. Then you were uncertain? A. We wanted you to be certain.

Q. Well, weren't you uncertain of the fact? A. We were not.

Q. Isn't that what that means? A. We were not in doubt about it.

Q. Well, now, let me read that to you again. A. We wanted you to know from us.

Q. Yes. A. We had known from you that our relations were severed. In other words, you, the Guild, kicked us out.

6738

Q. Yes. A. Now, we wanted to know that we accepted the kicking out by the Guild, and that we in turn severed our connections with the Guild.

Q. And is that your best explanation of Commission's Exhibit 477? A. That is my best explanation.

Mr. Martin: Object to the form of that question.

*By Mr. Albert.*

Q. In other words—

Examiner Bennett: Sustained.



*Louis B. Sappington—For Commission—Cross.*

6739

*By Mr. Albert.*

Q. —you want to inform us of the fact that we should be now aware of the fact that what we did we meant. A. That what you did we understood you meant, and that we meant the same thing in kind.

(Whereupon, at 4.30 o'clock P. M., August 18, 1936, the hearing in the above-entitled matter was adjourned:)

Court Room No. 722,  
Federal Building,  
Detroit, Michigan,  
August 19, 1936.

6740

Met, pursuant to adjournment, 10 A. M.

Before: JOHN W. BENNETT, Examiner.

(Same Appearances.)

PROCEEDINGS.

Examiner Bennett: Be in order, please. You may resume.

6741

LOUIS B. SAPPINGTON resumed the stand and testified further as follows:

*Cross-examination (continued) by Mr. Albert.*

Q. Certain of the exhibits, Mr. Sappington, that were placed in evidence with respect to the figures of various departments represent reports prepared by Mr. Touff, do they not? A. Some of them.

6742

*Louis B. Sappington—For Commission—Cross.*

Mr. Albert: I would like to ask Mr. Martin Mr. Simmons is going to take the stand. If he is respectfully ask that he be excluded during the remainder of the cross-examination. I thought that we had agreed that he was to be excluded prior hereto.

Mr. Martin: I do not recall any agreement. I am perfectly willing for him to be excluded.

Examiner Bennett: All right.

Mr. Martin: You may retire, Mr. Simmons.

Examiner Bennett: You may ask him to retire to another room.

6743

(Mr. Simmons left the hearing room.)

*By Mr. Albert.*

Q. Have you copies of those reports with you? A. I haven't a copy of all of the reports.

Mr. Martin: Which reports?

A. Of all the reports that Mr. Touff has made to me, no.

*By Mr. Albert.*

Q. Have you copies of reports that were made to you by Mr. Touff in connection with the specific exhibits that have gone into evidence? A. I have only copies.

6744

Mr. Martin: Just a minute. Which specific exhibits do you refer to? That is rather broad, Mr. Albert.

*By Mr. Albert.*

Q. Have you any reports, any inter-office communications with you made by Mr. Touff in connection with any of the specific exhibits that have gone into evidence?

Mr. Martin: Objected to as irrelevant and immaterial whether he has got them with him or not.

Mr. Albert: Again Mr. Martin wants me to ask the six questions first.

Mr. Martin: Wait—

Examiner Bennett: Well, that may be strictly true. I am going to let him answer, however.

The Witness: I have copies with me of the reports that are now in the record as exhibits.

*By Mr. Albert.*

Q. You mean you have copies of the exhibits as they exist in the records? By that you mean the transcription of the report by the stenographers? A. I think so. I am not sure that I have all of those without making a search.

6746

Q. I see. Have you Commission's Exhibits 481 and 482? A. Yes.

Q. Have you Commission's Exhibits 481 and 482 for Identification— A. You mean the original?

Q. —Mr. Sappington? A. The originals?

Q. The original exhibit which contained the inter-office communication of Mr. Touff. You knew from my very first question what I was asking you about. A. I haven't those.

Q. You haven't those? A. No.

Q. Where are they? A. I don't know.

Q. Who has them? A. I don't know.

6747

Q. Were they returned to you? A. No.

Q. They were not?

Mr. Albert: I call upon Mr. Martin to produce Commission's Exhibits 481 and 482 for Identification, containing the inter-office communication of Mr. Touff to Mr. Sappington with respect to the particular departments, a resumé of the figures of which is contained in evidence as Commission's Exhibits 481 and 482 in evidence.

6748

*Louis B. Sappington—For Commission—Cross.*

Mr. Martin: That is objected to. Those exhibits are not in evidence, and I object to the production of them unless I am required to do so by your Honor.

Mr. Albert: May I point out to your Honor the following facts—

Examiner Bennett: A portion of the papers that are in evidence are available.

Mr. Albert: Yes. That is quite right, your Honor.

Examiner Bennett: Yes.

6749

Mr. Albert: But Commission's Exhibits 481 and 482 in evidence, as they exist at the present time, contained inter-office communications to Mr. Sappington.

Mr. Martin: I object to that statement. That is an incorrect statement. Commission's Exhibits 481 and 482 are in evidence.

6750

Mr. Albert: There were certain matters in connection with Commission's Exhibits 481 and 482 that did not go into evidence, if it please your Honor. They were contained on the original exhibits that were presented by the Commission for identification. On those original exhibits there was certain information, certain advice, certain remarks, certain criticism by Mr. Touff for the enlightenment of Mr. Sappington in connection with that specific exhibit. Now, I ask the Commission, who is in possession of that exhibit, who is in possession of that inter-office communication, which seemingly throws enlightenment upon an exhibit now in evidence, to produce that exhibit in order that I might cross-examine Mr. Sappington about it.

Mr. Martin: Now, if your Honor please, I respectfully submit that counsel for respondent cer-

tainly has no right to cross-examine this witness on something that is not in evidence. Here is what is in evidence (indicating). He has a full and complete right to cross-examine him on what is in the evidence, the exhibits that were offered and received in evidence; but I respectfully submit that he has no right whatsoever to cross-examine him on exhibits which are not in evidence.

Mr. Albert; If it please the Court, I certainly should be permitted to cross-examine the witness upon information supplied to him by the man who prepared that exhibit which vitally affects that exhibit, but I cannot do it unless the Commission permits me to see what this man's report to Mr. Sappington is, unless the Commission is seeking to suppress evidence.

6752

Examiner Bennett: Yes.

Mr. Albert: This is an investigation, your Honor. They are not prosecuting us.

Examiner Bennett: I understand that. I think, though, I will leave it to the discretion of the attorneys. It is their case. If they do not want to—

Mr. Albert: Very well. If it please the Court, I offer to prove—

Examiner Bennett: All right.

Mr. Albert: —that if—

Examiner Bennett: Those documents outside of—

6753

Mr. Albert: I beg your pardon?

Examiner Bennett: The documents, outside of the portions that are in record, are documents which are not competent or anything that can be proved by them, so I do not see how you can offer to prove from those documents.

6754

*Louis B. Sappington—For Commission—Cross.**By Mr. Albert.*

Q. Mr. Sappington, was there any inter-office communication to you from Mr. Touff in connection with Commission's Exhibits Nos. 481 and 482 in evidence? A. Yes.

Q. Have you that inter-office communication with you? A. No, sir.

Q. Is it in your office? A. I can't tell you; I don't know.

Q. Do not you know whether or not you have copy of it? A. I do not.

6755

Q. Is it the only copy that you have, the one that was given to the Federal Trade Commission? A. It is the only copy I know of.

Q. It is the only one that was prepared? A. No; I don't believe it is the only one prepared. We usually prepare two or three duplicates of everything that is typed. Sometimes they are used, and sometimes they are not.

Q. Where are the duplicates? A. I don't know.

Q. Will you be good enough to look for them for me and if you find them will you be good enough to bring them in with you this afternoon? A. I will make a search.

Mr. Martin: I object to that.

Mr. Albert: So now the Commission objects to the witness volunteering to give me information that is in explanation of his own exhibit.

6756

Examiner Bennett: Well, I will give the witness the same instruction that I have always given, that he is not under obligation to do it, but if he cares to do it for accommodation of the attorneys—

*By Mr. Albert.*

Q. Have you any objection—

Examiner Bennett: —you may do it.



*Louis B. Seppington—For Commission—Cross.*

6757

*By Mr. Albert.*

Q. —supplying me with the copy of the inter-office communication from Mr. Touff to you made in connection with Exhibits 481 and 482? You understand that, in fairness, the Commission has instructed you that you are not under compulsion to bring it in if you do not so desire. Now, have you any objection to bringing it in? A. Yes; I think I should prefer not to.

Q. Is that because there is anything in that inter-office communication which contradicts or in any way differs with your interpretation of Commission's Exhibits 481 and 482 as they now exist in the record? A. No.

Q. Does that inter-office communication support Commission's Exhibits 481 and 482 as it now exists in the record? A. No. It contained additional information that was for my information, for me personally.

6758

Q. That information that it contained, that additional information, is that something that in any way contradicts or differs from anything that you have said on the witness stand here to-day? A. It contained some of Mr. Touff's personal opinions.

Q. Which differs from yours? A. Well, I wouldn't know unless I refreshed my memory. They may or may not.

Q. What is your objection in bringing it in if you do not know what is in it? You do not want to take a chance; is that it?

6759

Mr. Martin: Objected to, your Honor. He has already testified as to what his own opinion is. He has testified as to what his own opinion is, and he has testified that he does not care to bring this additional information in. Now, it contains Mr. Touff's opinion. Mr. Touff will be placed on the stand and Mr. Albert can cross-examine Mr. Touff at full length as to his opinion. He will be placed on the stand.

6760

*Louis B. Sappington—For Commission—Cross.*

Mr. Albert: Mr. Touff is going to take the stand?

Mr. Martin: He is.

Mr. Albert: Is that what I understood you to say? Very well.

(There was a discussion off the record.)

*By Mr. Albert.*

Q. Now, Mr. Sappington, the testimony that you have thus far given with respect to various policies and opinions, are the policies and opinions of J. L. Hudson Company, are they not? I mean, you have not interjected here any personal opinions of yours which are not the policy of J. L. Hudson Company or the opinions of J. L. Hudson Company, have you? A. Some of the statements that I made may be my own personal opinions, yes.

Q. Differing from those of J. L. Hudson Company? A. Not necessarily.

Q. Well, then— A. I would not know unless you told me which opinions you refer to. That is rather a blanket questions, covers a lot of territory.

Q. It certainly does, and so did your answer that some of them were your own personal opinions. What do you mean by that? A. You would have to tell me which opinions—which ones you want in certain cases.

Q. You volunteered the information that some of them were your personal opinions, certainly, as distinguished from the fact they were the opinions of J. L. Hudson Company.

Mr. Martin: Your Honor please, he did not volunteer anything; he answered the question.

Mr. Albert: All right, he answered the question.

*By Mr. Albert.*

Q. What were you thinking of when you said that such of your opinions that you have expressed here were per

*Louis B. Sappington—For Commission—Cross.*

6763

sonal opinions? A. As I recall your questions yesterday, you were very insistent that I give you my personal opinion—

Q. Yes. A. —if I did so, it was my personal opinion.

Examiner Bennett: I think the record shows.

Mr. Albert: Very well.

Examiner Bennett: —w — opinions are personal and what are not.

*By Mr. Albert.*

Q. Will you tell me, please, whether or not there is such a thing as origination in styles? A. There may be, but it goes a long time back in history.

6764

*By Mr. Albert.*

Q. So that you mean to-day there is no origination in style, that all styles were originated a long time back in history? A. I would not say that there is none; but I would say that there is very little, if any.

Q. To what extent? A. I don't know.

Q. —is there origination in styles? A. I don't know, but in my opinion very, very slight.

Q. Well, then— A. If any. I am not sure that there is any, but I would concede that if there is any, it is very, very slight.

Q. Well, now, Mr. Sappington, you mean by that, when you say that the difference is very slight, that the difference is a change of a button, or a change of a collar, or a slight change of a sleeve?

6765

Mr. Martin: Now, your Honor, please, it is understood that I have an objection to all of this line of inquiry?

Examiner Bennett: Yes. Well, I will sustain an objection.

6766

*Louis B. Sappington—For Commission—Cross.**By Mr. Albert.*

Q. Now, Mr. Sappington, what is it that your customers expected to find in your store in the spring season of 1936 because of their previous experience which they could not find? A. Certain types of dresses from certain houses that we have done business with over a considerable period of time.

Q. What types of merchandise? A. Well, that is a detail that I think Mr. Touff could testify on much better than I can.

Q. You mean that you do not know the types of merchandise that are missing, in a general way? A. Oh, yes, in a general way.

Q. Well, that is all I want. A. Well, misses' daytime dresses principally, certain types of sports dresses and junior dresses at \$10.75 and \$12.75 cost.

Q. Well, now, your customers did not know those dresses as misses' daytime dresses? A. Oh, yes.

Q. Or this department dress— A. Oh, yes.

Q. —or that department dress, did they? A. Oh, yes, yes, indeed.

Q. That is, they went to those particular departments? A. Oh, yes.

Q. And they noticed that a certain type of dress in that department, as distinguished from the same type of dress in that department, was not in stock; is that it? A. I don't understand the question. I am sorry, I don't know what Mr. Albert wants to know.

6768

Q. You have testified, Mr. Sappington, that your customers claimed that they could not get the same type of goods in 1936 that they had previously; is not that correct? A. I testified that we know we are not offering to our customers certain types of merchandise that we have offered previously, and that we know are available on the market, were available on the market during the spring season, and that our competitors offered to our customers.



*Louis B. Sappington—For Commission—Cross.*

6769

Q. Well, now, what is there about the merchandise that you are offering this year that differs from the merchandise that you were offering last year? A. Oh, we are not offering it; we cannot get it.

Q. Yes. That is quite true. You have been telling us that for three days, Mr. Sappington.

Mr. Martin: I move that be stricken.

*By Mr. Albert:*

Q. What is there, Mr. Sappington, in Guild merchandise that is necessary to J. L. Hudson & Company—is that plain language? I think that is reducing it to its most elemental language. Now, if you will, be good enough to give me an equally elemental reply I think we will all be very happy. A. I shall try very hard.

6770

Q. I do not think you have to try very hard; I think you know the answer. A. There are many things in the merchandise, and also in the production of the merchandise—

Q. Well, may I suggest— A. Now, those two things go hand in hand.

Q. Yes. Now, may I suggest that you leave the question of production of merchandise—

Mr. Haycraft: Oh, now—

The Witness: I can't.

6771

*By Mr. Albert:*

Q. —to the end of your answer and tell us the other things first, if you will?

Mr. Haycraft: That is objected to, your Honor.

A. Those two things go hand in hand. Excuse me, I did not know whether you were listening or not?

6772

*Louis B. Sappington—For Commission—Cross.*

*By Mr. Albert.*

Q. Oh, yes, I am listening. A. There are certain style features, there are certain types of merchandise that the Guild houses make, that we like, that we have shown to our customers, season after season. One example is \$11.75 cost dress made by C. H. D. Robbins. We cannot duplicate that dress.

6773

Now, because a manufacturer makes a desirable dress is not the whole story. His ability to deliver that dress as fast as we want it is equally important, particularly in the misses' daytime field where the turnover is very rapid, where hot numbers develop fast, and it is where it is necessary to get twenty or thirty of the style, and get them in a hurry. Now, the houses that we have selected from the market as the houses best equipped to do that, particularly in the \$10.75 cost field, happen to be Guild houses—

Q. Are those what are called preferred resource houses—

Mr. Martin: Let him finish.

Q. —by the A.M.C.?

Mr. Martin: Were you through with your answer, Mr. Sappington?

Mr. Albert: I am sorry, he dropped his voice.

The Witness: Yes, I am through.

6774

Mr. Martin: All right, then.

*By Mr. Albert.*

Q. Are the latter houses you have referred to the preferred resource houses of the A.M.C.?

Mr. Martin: Objected to as irrelevant and immaterial. His testimony is not as to what is preferred by the A.M.C., but what is preferred to by Hudson.

Examiner Bennett: Read the question.



*Louis B. Sappington—For Commission—Cross.*

6775

(Question read.)

Examiner Bennett: I will let him answer.

A. I don't know.

By Mr. Albert.

Q. Mr. Sappington, do you contend that there are no other houses manufacturing a \$11.75 dress, aside from C. H. D. Robbins? A. I did not say that.

Q. Well, what is there about C. H. D. Robbins dress that cannot be duplicated? A. Well, there are certain methods of handling, the styling of the dress; there is a certain conception that you, if you are buying and selling dresses, that you get when you see that dress; there is a certain desirability about that dress that is very hard to describe, because it is involved in the styling of the dress.

6776

Q. And it has a distinctive buying appearance— A. It has.

Q. —which is recognized, and which you cannot get from any other house? A. It has a distinctive appearance, yes.

Q. And you cannot get that from any other house? A. We have not been able to duplicate any resource in the market, to duplicate the \$11.75 dresses that we bought from C. H. D. Robbins this spring.

Q. And that is a designing type, a designing element that cannot be gotten from any other \$11.75 house—do you mean to tell us that, Mr. Sappington? A. I don't know whether it is a designing element or not; certainly it is a type of garment—

6777

Q. You said it is a distinctive line, and a distinctive style. Do you mean to tell me that that cannot be copied, that no other house can make it? A. I don't know.

Q. Is that what you mean? A. I don't know whether any other house can make it or not; no other house is making it.

6778

*Louis B. Sappington—For Commission—Cross.*

Q. You said you cannot duplicate it, did you not? A. I meant in the market. I cannot find it in the market.

Q. Have you attempted to subsidize any manufacturers to duplicate dresses—

Mr. Martin: Objected to as irrelevant and immaterial and outside of the scope of proper cross examination.

Mr. Albert: I think it is right on the point, your Honor, on this question that it cannot be duplicated.

Examiner Bennett: I sustain the objection to that.

6779

*By Mr. Albert.*

Q. Have you chipped into the A.M.C. pot?

Mr. Martin: Objected to; same objection.

Examiner Bennett: Sustained. That has been gone into in the record and it has not been shown that the A.M.C. is able to duplicate those things.

*By Mr. Albert.*

Q. Did the A.M.C. ask you for any contributions to subsidize manufacturers?

Mr. Martin: Objection. Same objection.

Examiner Bennett: Sustained.

Mr. Albert: Exception.

6780

*By Mr. Albert.*

Q. Now, what is there, Mr. Sappington, about that C. H. D. Robbins dress that you cannot get any place else?

A. Oh, I think you would get a lot more information if you would ask that question of Mr. Touff; he has been buying those dresses for years. I—

*Louis B. Sappington—For Commission—Cross.*

6781

Q. Well, is there— A. I have seen them in the department. I have been in the market, but I cannot—I cannot give you those technical—that technical information as well as a dress buyer. Now, you have been told that Mr. Touff is coming on the stand; if you want that information, you can get it from him.

Q. Do you mean, Mr. Sappington, that you have not sufficient information upon which to predicate your opinion that there is no such thing as origination in style?

Mr. Martin: Objected to.

A. Oh, yes.

Q. Now, after all this time that you have had to think, Mr. Sappington, what is the rest of your answer? A. Yes. I meant to say because I have enough information to form a very definite opinion about the origination of style.

6782

Q. What is that information you have? A. Information I have obtained from my contact with the garment business for a number of years. I know that dresses are designed with a Georgian this, or an Elizabethan that, and claimed original, and those same styles come back from the ages. We have stuff coming from the Chinese—how many thousand years old is that? Somebody makes a dress with a Chinese touch to it? Original style? No. Somebody makes a Georgian dress. Original style? No. They copy a man's coat that was worn in the 1800's. Original style? No. Of course it is not original. That has been ruled on in courts outside of this country a long time ago.

6783

Q. When did you make a study of those cases?

Mr. Martin: Objected to as being irrelevant and immaterial.

Examiner Bennett: Yes. I will sustain an objection. I have gone into that and into it and into

6784

*Louis B. Sappington—For Commission—Cross.*

it, and we are not getting anywhere. And what it, after you get it into the record?

Mr. Albert: If it please the Court, may I inform you what I intend to do with this witness, off the record, on this particular phase?

Examiner Bennett: Oh, you may inform me, but I—I am rather skeptical. We are not going to take a recess at this time.

(There was a discussion off the record.)

Examiner Bennett: It is not necessary to argue the case on the record with the witness. All right, you may proceed.

6785

*By Mr. Albert.*

Q. Now, Mr. Sappington, is it your contention that when an Elizabethan trend is the fashion for the season, that is in the models without variation of any kind?

Mr. Martin: Objected to as irrelevant and immaterial.

Examiner Bennett: Read the question, please.  
(The question was read.)

Examiner Bennett: Do you understand the question?

The Witness: Yes, sir.

Examiner Bennett: All right. You may answer.  
Overruled.

6786

A. No; there are variations applied all along the line, of course, but still you have the distinctive features present. Otherwise it couldn't be recognized. That doesn't mean that the style is an original style.

*By Mr. Albert.*

Q. Is there anything new under the sun, Mr. Sappington?



*Louis B. Sappington—For Commission—Cross.*

6787

Mr. Martin: Objected to.

A. I have heard—

Mr. Martin: As irrelevant, immaterial.

Examiner Bennett: Sustained.

*By Mr. Albert.*

Q. Mr. Sappington, do you distinguish between the trend of style and the design of a dress?

Q. Do I understand, then, if it please the Court, along this same line that your Honor will sustain all objections of Mr. Martin to any questions of mine seeking to elicit from the witness upon what he predicates his opinion that there is no such a thing as style origination?

6788

Examiner Bennett: Yes, I think that is a fair statement.

Mr. Albert: Exception.

*By Mr. Albert.*

Q. Mr. Sappington; did you ever get any hot numbers from houses other than Guild houses? A. You mean by that question to cover every price line we carry?

Q. Yes. A. Yes.

Q. And were those hot numbers equally as hot as anything that the Guild produced?

Mr. Martin: Oh, objected to, your Honor.

6789

Examiner Bennett: Overruled. You may answer.

A. I couldn't answer that without going over our records of re-orders.

Q. Well, will you agree that—I withdraw the question. Who supplied you with hot numbers; have you any idea?

A. I couldn't answer that without going over the records.

6790

*Louis B. Sappington—For Commission—Cross.*

Q. So that at the present time you have no knowledge as to what houses other than Guild houses have supplied you with hot numbers?

Mr. Martin: Objected to as irrelevant. He has testified that houses other than Guild houses have supplied him with hot numbers, and as to which particular ones I can't see the relevancy of it.

Examiner Bennett: I will sustain the objection.

Mr. Albert: Exception.

*By Mr. Albert.*

6791

Q. From whom did you get Guild merchandise after the red carding, Mr. Sappington?

Mr Martin: Objected to.

Examiner Bennett: Overruled. You may answer the question. The question is very general. I presume it calls—

The Witness: Your Honor, I should prefer not to mention the names of the houses that we obtained Guild merchandise from after red carding.

Examiner Bennett: Yes; I shall not insist on that.

Mr. Albert: Exception.

Examiner Bennett: I supposed that the general statement—

6792

*By Mr. Albert.*

Q. Now, Mr. Sappington—

Examiner Bennett: Would be proper to so general a question. I didn't expect that it called for naming individual houses.

A. From various houses.



By Mr. Albert.

Q. Mr. Sappington, you testified that you obtained merchandise from a Guild manufacturer during the time that he was a member of the Guild, that that manufacturer had since resigned; did you not? A. I did.

Q. Will you give us the name of that manufacturer who provided you with Guild merchandise? A. Your Honor, I should very much prefer not to do that.

Examiner Bennett: I will ask you in that connection, Mr. Sappington, whether you think it would be a serious injury to the business of Hudson & Company?

The Witness: And to the manufacturer also, yes, sir.

6794

Examiner Bennett: I see. All right.

By Mr. Albert.

Q. Now, Mr. Sappington, since that manufacturer is no longer a member of the Guild what injury do you think could occur to him by your divulgence of his name?

Mr. Martin: Objected to. The witness has already testified that he thought it would injure both his store and the manufacturer.

Mr. Albert: And I suppose we are supposed to be bound by that answer?

Examiner Bennett: Yes. Well, the fact, of course, goes to the weight of the evidence, but I will not ask the witness or attempt to force him to give up information of that sort.

6795

By Mr. Albert.

Q. Mr. Sappington, is your testimony to the effect that you purchased Guild merchandise from Guild manufac-

6796

*Louis B. Sappington—For Commission—Cross.*

turers and your subsequent refusal to reveal the names of those manufacturers interjected into these proceedings for the sole purpose of attempting to cause dissension among the members of the Guild manufacturers?

Mr. Martin: Objected to.

Examiner Bennett: Well, I think the witness should be permitted to comment upon that statement.

Mr. Martin: All right, sir. Go ahead.

The Witness: Could I have the question, please? (The question was read.)

6797 The Witness: I was asked the question. I gave the true answer.

By Mr. Albert.

Q. In other words, you refuse to tell me whether or not your testimony with respect to these Guild manufacturers having supplied you with merchandise has been interjected maliciously and solely for the purpose and with the knowledge that your testimony would be read in "Women's Wear" and would create the impression among the minds of the Guild that you were able to get merchandise after you were red carded; is that so? A. No.

Q. Well, then, what is your answer to the question? You refused to answer it twice now. A. Simply that I was asked the question and I answered and I gave you the fact.

6798

Q. You answered that you didn't want to give the names because you thought it might cause injury to the manufacturer; isn't that so? A. I didn't want to give the name because the manufacturer definitely asked us not to give the name.

Q. I see. Wasn't that evidence of the fact, as far as you were concerned, that at the time that manufacturer was

*Louis B. Sappington—For Commission—Cross.*

6799

doing an immoral, unethical thing in breaking his agreement with the Guild and that you were aiding him in doing that?

Mr. Martin: Objected to, your Honor.

Examiner Bennett: Sustained.

*By Mr. Albert.*

Q. At the time that you got this merchandise from the Guild manufacturer, or allegedly obtained this merchandise from the Guild manufacturer, didn't you know that he was breaking his promise to the other manufacturers?

Mr. Martin: Objected to.

Examiner Bennett: Sustained.

6800

*By Mr. Albert.*

Q. Now, I again ask you for the fourth time and I haven't as yet received an answer: Isn't it true that you have testified that certain manufacturers who were Guild members gave you merchandise after you were red carded, and you have declined to give us the names of those manufacturers solely for the purpose of having it appear that Guild members were not abiding by the Guild rules, and by reason thereof cause dissension among the Guild members?

Mr. Albert: Now, if it please the Court, may I ask that Mr. Simmons be requested to leave the stenographer's room where the minutes are being dictated into a machine in his presence as they are being read off here this morning.

6801

Examiner Bennett: Well, I think Mr. Simmons has excellent powers of concentration if he can get very much from that. I am going to let it stand.

Mr. Albert: Very well, your Honor.

Mr. Martin: Ha, ha.

6802

*Louis B. Sappington—For Commission—Cross.*

Mr. Albert: May I ask for the last question.

The Reporter: You were about to make an offer of proof.

Mr. Albert: If it please the Court, that if I were permitted to examine the witness with respect to the names of the manufacturers, Guild members at the time of his red carding who allegedly supplied him with merchandise while they were members of the Guild, the witness would be unable to bring in records demonstrating the fact that manufacturers who were members of the Guild at the time of the red carding furnished him with Guild merchandise.

6803

Examiner Bennett: All right.

*By Mr. Albert.*

Q. Did you obtain any Guild merchandise through fictitious accounts, Mr. Sappington?

Mr. Martin: Objected to.

Examiner Bennett: Read the question.

(The question was read.)

Mr. Martin: We withdraw the objection.

A. You—what do you mean—may I ask what you mean by fictitious accounts?

6804

Mr. Albert: Will you read the question and answer?

(The question and answer were read.)

*By Mr. Albert.*

Q. Well, let me give you this example. Bloomingdale, one of the A.M.C. stores, purchased Guild merchandise through another house. When the merchandise was delivered to that other house, it was redelivered to Blooming-

*Louis B. Sappington—For Commission—Cross.*

6805

dale's. Now did the J. L. Hudson Company ever do anything like that?

Mr. Martin: Objected to as irrelevant and immaterial.

Examiner Bennett: Overruled. I am going to let him answer.

Mr. Martin: All right, sir. Go ahead.

A. We have never bought any merchandise through Bloomingdale's, no, sir.

Q. Did you think that I asked you whether or not you bought merchandise through Bloomingdale's? A. You asked me for—

6806

Q. And did I state that anybody bought merchandise through Bloomingdale's? Isn't it a matter of fact that I stated— A. Yes.

Q. —that I stated Bloomingdale's bought merchandise through a third party? Isn't that what I stated? A. Well, as I recall it—

Q. You know, a good boxer, Mr. Sappington, when he gets hit hard always smiles. Is that why you are smiling?

Mr. Martin: Objected to as being irrelevant and immaterial.

*By Mr. Albert.*

Q. Well, now, will you answer my question, please? A. I don't know what you mean like that. That is too general I can't answer.

6807

Q. Well, now, look. Let me put it on elemental terms. J. L. Hudson Company is red carded and can't get Guild merchandise according to you; is that right? A. That is right.

Q. There are stores that can get Guild merchandise; isn't that so? A. That is so.



6808

*Louis B. Sappington—For Commission—Cross.*

Q. Did J. L. Hudson & Company ever have these stores that can get Guild merchandise order the Guild merchandise and then transship it, reship it, redeliver it, or go out back alleys and deliver it to J. L. Hudson & Company? Do you mind if I smile when I say no?

Q. No, but you didn't smile, Mr. Sappington.

Mr. Meder: Ha, ha, ha.

Q. (Continued) You didn't smile, Mr. Sappington. Well, it is very hard to smile and say "No."

Mr. Meder: Ha, ha, ha.

The Witness: Ha, ha.

Mr. Martin: Ha, ha.

6809

*By Mr. Albert.*

Q. Watch. No (indicating). A. Your mouth is different than mine.

Q. Now, that we have had a little jesting, which is very acceptable on this hot day, Mr. Sappington, and we all enjoyed it— A. Thank you.

Q. You are quite certain of that?

(There was a short pause.)

Q. Do you have to stop and think or don't you know?

Mr. Martin: Let him answer the question.

6810

A. Ha, ha. That is an important question. I want to be very careful. Yes, I am quite certain.

Q. You are quite certain? A. (Witness nods head affirmatively.)

Q. Did you have to think back as to the manner in which you obtained Guild merchandise? A. Oh, no.

Q. To be certain that that was not one manner of obtaining it? A. No, sir.



*Louis B. Sappington—For Commission—Cross.*

6811

Q. But you did take some time to think very deeply on the point, didn't you?

Mr. Martin: Object to that.

The Witness: Ha, ha.

By Mr. Albert.

Q. Mr. Sappington, isn't it a fact, or is it a fact that the alleged Guild manufacturer who has since resigned from the Guild sold you merchandise through Rosenthal-Kallman?

Mr. Martin: Objected to, and I move that the word "alleged" as used in the question be stricken out, and I object to the answer and the question.

6812

Examiner Bennett: I sustain the objection.

By Mr. Albert.

Q. Well, now, Mr. Sappington, you say that the good will of your customers has been hurt by the Guild program.

Mr. Martin: Objected to. He has gone into that thoroughly on both direct and cross-examination.

Examiner Bennett: Overruled. You may answer.

A. Well, in several ways. We had merchandise on order, on special order, at the time of the red carding, and had been on order a considerable period of time. As customers came in inquiring about the delivery, we had to tell them that we couldn't get the merchandise. We had merchandise in stock at the time of red carding in the latter part of February and the first part of March in our higher-priced lines where size ranges are not complete. And this is an ordinary way of doing business; it is done in every

6813

6814

*Louis B. Sappington—For Commission—Cross.*

store, in every shop; customers would come in and want one size or one color we didn't have. She would ask to special order that size for her. We had to say that we couldn't do it. We had one very important customer, a very prominent woman in Detroit, who is quite influential, who is—who was very much upset and couldn't understand why we couldn't give her the kind of service that she had been able to get in our store previously, and could get at other stores in Detroit. We had plenty of occurrences like that.

Q. Did you explain why? A. No, we didn't explain why.

6815

Q. Didn't you give her any reason? A. We told her it was impossible for us to get merchandise.

Q. Were you ashamed of the reason?

Mr. Martin: Objected to as being irrelevant and immaterial.

Mr. Albert: He brought it up, your Honor.

Mr. Martin: He didn't bring up anything. He answered your question.

Examiner Bennett: Read the question.

(Question read.)

Examiner Bennett: Sustained.

*By Mr. Albert.*

6816 Q. Did you tell her that the reason it was impossible for you to get merchandise was because you refused to protect her in the style of dress that she wanted, in seeing to it that that dress could not be copied in the City of Detroit?

Mr. Martin: Objected to. The witness has already stated fully what he told.

Mr. Albert: He has merely—he has merely given the ultimate fact; not the reason.

*Louis B. Sappington—For Commission—Cross.*

6817

Examiner Bennett: Sustained. I think it is unnecessary to go into these arguments in the examination on cross or direct.

*By Mr. Albert.*

Q. Of course, Mr. Sappington, the fact that the customer was disgruntled or dissatisfied about something affected the good-will of Hudson & Company; did it not?

A. We think it did.

Q. So that the good will that you built up with your customer, and—withdrawn. Now, Mr. Sappington, do not you concede that there is any good will to protect on the part of the manufacturer of the dresses which you seek?

6818

Mr. Martin: Read that question back to me.

(Question read.)

Mr. Martin: Objected to as irrelevant and immaterial to the issues in this case.

Examiner Bennett: Overruled. You may answer.

The Witness: I will have to ask for the question again.

Examiner Bennett: Yes.

The Witness: I didn't understand the question when it was first asked.

(Question read.)

The Witness: I am sorry. I can't answer the question. I don't understand it.

6819

*By Mr. Albert.*

Q. The manufacturers whose dresses you seek? A. Seek?

Q. Seek. A. Seek, s-e-e-k?

Q. The dresses that you want. A. Yes.

Q. S-e-e-k. A. I see. All right.

6820

*Louis B. Sappington—For Commission—Cross.*

Q. Have a good will that they have established in their dresses, haven't they? A. Good will with the retailer, I suppose, yes.

Q. Yes. I mean that it is obvious because you are insistent on getting them; isn't it? Isn't it? A. We are not insisting on getting them because of the good will that the manufacturer has established between himself and us. We want the dresses because we feel that they are desirable for our stocks. They enable us to put—to maintain a competitive position with other retailers in Detroit and enable us to go along with our business as we have established it.

6821

Q. Well, now, isn't it a fact that you want their dresses? A. That is why we want them.

Q. Doesn't that constitute—I am referring to your desire to get their dresses as distinguished from other houses—doesn't that constitute good will that that manufacturer has built up with your store, that you would want his merchandise in preference to somebody else's? A. Well, I don't know.

Q. What is good will, Mr. Sappington? Let us see if you know what good will means, if that isn't good will. A. Well, I suppose the good will is the friendly feeling that exists between an organization and its customers.

Q. Built up as a result of, what? A. Of satisfactory dealings over a period of years.

6822

Q. And so, as a result of satisfactory dealings over a period of years, you are very friendly to Guild manufacturers now; is that it? A. We are very friendly with the Guild manufacturers; yes.

Q. And doesn't that constitute good will between the manufacturers and yourself? A. Yes.

Q. Now, if they couldn't satisfy you with their merchandise, that good will would be vitally affected, wouldn't it? You wouldn't be quite so friendly with them, would you? A. Well, we might be.



Q. You mean— A. I think good will is more a matter of ethics, partly a matter of ethics. We might feel just as friendly toward a manufacturer, although we couldn't use his goods.

Q. Well, that isn't good will, is it? That is merely comradeship. A. Well—

Q. Or you merely dislike the man. A. Very indefinite thing.

Q. But manufacturers are in business to make a profit; aren't they? They don't want your good feeling unless you buy goods from them? A. That is right. Not necessarily.

Q. So that— A. No.

Q. You are still friendly with them and don't buy goods from them; it is not good will, is it? A. It could be.

Q. Haven't the manufacturers a substantial item to protect in attempting to preserve their good will with you? A. Yes.

Q. Doesn't that good will consist of preventing it, if possible, the loss of their business to competing manufacturers? A. Yes, I should think so.

Q. And when competing manufacturers copy their styles at lesser prices and make it possible for your customers to get goods from these competing retailers at lesser prices to the loss of your business, does not that affect the good will of your business with the Guild manufacturers? A. I don't know why it should.

Q. Well, now, let us see. Let us assume a hypothetical case.

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Mr. Martin: I object to any further questioning along this line, your Honor.

Examiner Bennett: I will sustain the objection. I think it has gone far enough.

Mr. Albert: Exception.

Examiner Bennett: All right.

6826

*Louis B. Sappington—For Commissioner—Cross.**By Mr. Albert.*

Q. Now, Mr. Sappington, is it your contention that you had maintained your volume of Guild merchandising your departments would automatically have gone ahead in dollar volume? A. I can't answer that positively.

Q. Now, Mr. Sappington, were you on active—shall I say—duty, with J. L. Hudson Company all during 1933?

A. No, sir.

Q. During what period of time were you not on active duty? A. Well, part of August.

Q. For how long a period of time would you say? A. Well, part of August, September and October.

6827

Q. So that, for, roughly speaking, approximately two and a half months of 1935 you were away from the business; is that what you mean? A. Well, I was at home. I had constant touch with the business through my assistants, through Mr. Dowley. I telephoned; most of the important matters were discussed with me; practically every important decision was discussed with me. I had arthritis, which makes it very difficult to move. I don't think it affected my ability to discuss plans and to think; I don't think my ability to think was any worse than it is normally.

Q. And you hope that it has not manifested itself thus far? A. I hope it is not permanent, I can tell you that.

6828

Mr. Feldman: We hope so, too.

*By Mr. Albert.*

Q. I show you a letter signed by Mr. Bergdahl, and ask you if you recognize that to be his signature? A. Yes, I think that is Mr. Bergdahl's signature.

Q. Mr. Bergdahl is the gentleman whom you refer to in A.M.C. as one authorized to speak for J. L. Hudson Company—

Mr. Martin: Objected to.



*Louis B. Sappington—For Commission—Cross.*

6829

*By Mr. Albert.*

Q. —as being the intermediary between J. L. Hudson Company—

Mr. Martin: Objected to. There is no such statement in the record.

Examiner Bennett: I remember none. The witness would know whether he made such a statement.

The Witness: I don't recall making such a statement. There are occasions when Mr. Bergdahl is given the authority to make arrangements for us, but there is no blanket authority given to Mr. Bergdahl to make arrangements for us.

6830

*By Mr. Albert.*

Q. And he has generally acted, on numerous occasions, as the zone officer between J. L. Hudson Company and the Guild and other members of the A.M.C. Stores, and the Guild; is that not so, and you have had various conferences with him with respect to Guild policies, and, as a matter of fact, you have placed into evidence some letters and telegrams passing between you and Mr. Bergdahl with reference to Guild policies?

Mr. Martin: Object to the form of the question. He is trying to cover everything in one question. Let him ask separate questions.

6831

Mr. Albert: I think we will do—

Examiner Bennett: Read the question.

(Question read.)

Examiner Bennett: Do you recall the summary—

The Witness: I think so, there are some—I will answer it backwards. I can remember the last part better. There are some exhibits from Mr. Bergdahl to the J. L. Hudson Company. Yes.

6832

*Louis B. Sappington—For Commission—Cross.**By Mr. Albert.*

Q. And he has— A. We have asked Mr. Bergdahl's opinion on various matters, yes.

Q. And he has at various times communicated to you the result of conferences that he has had with the Fashion Originators Guild, has he not? A. He has told me personally, and I believe in correspondence, of certain discussions that he has had with the Fashion Originators Guild, or some of its members.

Examiner Bennett: Later on there may be motion to strike if it is not properly cleared up.

6833

(Photostatic copy of letter from Mr. H. O. Bergdahl, Association of Buying Offices, Inc., by Special Committee, under date of August 3, 1935, to Mr. A. M. Post, Executive Director, Fashion Originators Guild of America, 512 Seventh Avenue, New York City, heretofore marked for identification Respondents' Exhibit 46, was marked as an exhibit and received in evidence.)

*By Mr. Albert.*

Q. Now, is it a fact, Mr. Sappington, that the sole reason for the refusal of Guild members to sell you merchandise was the result of your policy, of your refusing to cooperate in protecting their originations? A. No, sir.

6834

Q. What other reason is there, Mr. Sappington? A. For the reason that the manufacturers shut—

Mr. Martin: Wait just a second— Ask him whether there is any reason first.

Mr. Albert: I think it is logical, if that is not the only reason there must be some other reason.

Examiner Bennett: All right. Let him answer.

Mr. Martin: Go ahead.

*Louis B. Sappington—For Commission—Cross.*

6835

A. The reason the manufacturers refused to sell his merchandise was because we were red carded by the Guild—?

*By Mr. Albert.*

Q. Were you— A. —and they were told not to sell us merchandise.

Q. That is quite true, perhaps, but were you not red carded by reason of your announced policy of refusing to co-operate in protecting the origination of Guild merchandise? A. We were not.

Q. Why were you red carded? A. We don't know.

Q. And after all this testimony you still do not know why you were red carded? A. We think we were red carded unfairly and unjustly. 6836

Q. And despite the fact that you think you were red carded unfairly and unjustly, you made no request of the Fashion Originators Guild from February 14 down to February 27 to determine why you were red carded? A. We did not. The way we were treated by the Guild we did not want to make any request from him.

Q. So you did not care about it? A. Yes, we cared.

Q. Then why did you not find out about it? A. We were handled in such an unjust and unfair fashion that our firm refused to lower themselves to a point where they would discuss the matter again.

Q. And that despite the fact that you were unaware of Guild methods, as you testified to, that you had not made very much examination of the Guild methods— 6837

Mr. Haycraft: Read the question.

Mr. Martin: Read the question. We did not quite get it.

(Question read.)

Mr. Albert: Question withdrawn.

*Tightly Bound*

6838

*Louis B. Sappington—For Commission—Cross.**By Mr. Albert.*

Q. Now, Mr. Sappington, do you not know as a matter of fact that if J. L. Hudson Company advised the Fashion Originators Guild of America of its intention to co-operate with the Guild policy of protecting the style of members of the Guild, that J. L. Hudson Company can have all of the merchandise that it wants? A. Nobody has told me that.

Q. What is your opinion about it?

Mr. Martin: I object to his opinion.

A. I don't know.

6839

Q. You don't know? A. I don't know what the Guild would do; I know what the Guild has done.

Q. Well, now, Mr. Sappington, I tell you now that if J. L. Hudson Company subscribes to the program of protecting Guild merchandise, that J. L. Hudson Company can get all of the merchandise from Fashion Originators Guild members that it desires, are you now willing to sign a declaration of co-operation? A. Are you suggesting that we turn the other cheek? We have been slapped once.

Q. I am not suggesting anything at all, Mr. Sappington. A. I cannot decide on that. That is a firm policy. That is a matter to bring before the firm of the J. L. Hudson Company, not to me.

Q. Will you bring it before the firm? A. No.

6840

Q. In other words, you are— A. Not until all this legal question is settled. We are in doubt as to the legality of the proposition.

Q. Were you not in doubt of the legality of the proposition when you first joined the Guild? A. No.

Q. You were not? A. No.

Q. You were convinced of it? A. No, we did not take up the question of the legality of the proposition.

Q. You did not investigate it at all? A. No.

*Louis B. Sappington—For Commission—Cross—Redirect.* 6841

Q. You just joined something without knowing what it was all about? A. No.

Mr. Albert: That is all, Mr. Sappington.

Examiner Bennett: All right. No redirect?

*Redirect examination by Mr. Martin.*

Q. Now, Mr. Sappington, you were requested by Mr. Albert to obtain certain information with reference to the moving of departments in your store? A. Yes, sir.

Q. Did you bring it here? A. Yes, sir.

Q. Do you have that information available with you now? A. Yes.

6842

Q. What did you find out?

Mr. Albert: That is objected to, if it please the Court, as improper redirect.

Mr. Martin: I suggest that it is highly proper, your Honor. It was brought here at Mr. Albert's request, and brought out by him.

Examiner Bennett: Yes, I think it is proper redirect examination if you want to go into it.

Mr. Martin: All right.

*By Mr. Martin.*

Q. What did you find out, Mr. Sappington?

Examiner Bennett: I think it is not important.

6843

A. Why, we—I found that Departments 338 and 358, which were the departments under consideration—under discussion yesterday—were located permanently in their present location on the 24th of December, 1935, which was a month and a half before we were red carded, so that all of the disturbing, or alleged disturbing elements that might have been inflicted on these two departments while



6844

*Louis B. Sappington—For Commission—Redirect*

their quarters were being rehabilitated, took place before the 14th of February, 1936, so that they were in an improved condition, with new rugs, new upholstery, new appointments in all respects by the 14th of February, 1936.

*By Mr. Martin.*

Q. Did they have air conditioning in 1936? A. They had air conditioning; yes, sir; in 1936.

Q. But not in 1935? A. But not in 1935.

6845

Q. Now, with reference to any other affected departments, what did you find? A. Department 369, which was one of the departments under discussion yesterday, was in its permanent location on the 31st of December, 1935, and has not been disturbed since, and is in almost exactly the same spot in which it is located all of the previous years, that is 1935.

Q. All right. Anything else—wait just a moment. Did you make any further investigation to determine whether moving of the department had an effect on its business? A. Yes, sir; I did.

6846

Q. What effect? A. I took one, the suit Department No. 300, which was moved, moved four times between the latter part of November and the 31st of December, when it was in its permanent location. This department during these two months when it was moved four times had an increase of 97 per cent. in November and an increase of 32 per cent. in December. This increase is in dollar volume.

Q. Did you make any further investigation? A. I made a further investigation of the fur department, which was moved from the sixth floor, which had been its permanent location, to the—I mean, I beg your pardon—moved from the fifth floor, which was its permanent location, to the sixth floor, which was a temporary location, was moved.



*Lottis B. Sappington—For Commission—Redirect.*

6847

back again to the fifth floor, to its new permanent location, which was different from its old location of the fur department. In its new temporary location on the sixth floor following a move late in December, between Christmas and New Years, that department had an increase of 6.8 per cent. In February, part of the time on the sixth floor, part of the time back in the new location, new permanent location on the fifth floor, this department had an increase of 35 per cent., so that it is not necessarily true that moving around makes a department lose business.

Q. Now, with reference to Commission's Exhibit 478—

Mr. Albert: What exhibit is that?

6848

Mr. Martin: 478, and so forth.

*By Mr. Martin.*

Q. —which is a list of Guild houses used by dress departments in 1935, I believe in your testimony you stated that that list did not contain a list of the junior resources; is that true? A. Yes, sir.

Q. Have you such a list? A. I believe I have.

(List of "Guild houses with whom we did business during 1935 in the Junior Miss Department," under date of August 1, 1936, was marked for identification Commission's Exhibit 510.)

Q. I hand you Commission's Exhibit 510 for Identification, and ask, can you identify that? A. Yes, sir.

6849

Q. What is it? A. It is a list of Guild houses with whom we did business in 1935 in the Junior Miss—in the Junior Miss Department.

Mr. Albert: Which is a subdivision of 371?

The Witness: No, the Junior Miss Department is 371; these are dress manufacturers.

6850

*Louis B. Sappington—For Commission—Redirect.*

*By Mr. Martin.*

Q. Was this prepared for you at your request? A. Yes, sir.

Q. In the ordinary course of business? A. Yes, sir.

Q. And relied upon by you? A. Yes, sir.

Q. And believed by you to be correct? A. Yes, sir.

Mr. Martin: I offer the same in evidence, your Honor, as Commission's Exhibit 510.

Examiner Bennett: Received. I hear no objection.

6851

(List referred to, heretofore marked for identification Commission's Exhibit 510, was marked as an exhibit and received in evidence.)

*By Mr. Martin.*

Q. Now, Mr. Sappington, you were asked on cross examination yesterday—did you know that Mrs. Miller, the Guild shopper for Detroit, was formerly an employee of Hudson's? I now ask you how many employees does J. L. Hudson Company have? A. Well, it varies between six and eight thousand.

Q. So that it would be quite reasonable if you were not to remember the particular employee in that number? A. Yes, sir.

6852

Mr. Albert: Does that include its secretaries and stenographers?

*By Mr. Martin.*

Q. The six and eight thousand includes all employees does it not? A. It includes all employees; yes, sir.

Q. Now, Mr. Sappington, up until the time Hudson's was red carded, did they co-operate with the Guild from the time they originally signed the Declaration of Cooperation up until the time of red carding?

Mr. Albert: That is objected to.

Q. Did they co-operate?

Mr. Albert: That is objected to as being improper redirect, and fully covered on direct and cross-examination.

Mr. Martin: I suppose you will concede that they co-operated?

Examiner Bennett: Well——

Mr. Albert: I will have to take a leaf from the book of Mr. Martin and Mr. Haycraft. I concede nothing; I admit nothing.

Mr. Martin: All right, sir.

6854

Mr. Albert: I will agree to nothing.

Mr. Martin: O.K.

Mr. Haycraft: Insist on the question.

Mr. Martin: We will insist on the question.

Mr. Albert: I will concede that they don't think that they co-operated.

Mr. Martin: We insist on the question, then, your Honor.

Examiner Bennett: You seem to be opening up a field of inquiry that may go a good ways.

Mr. Martin: I didn't hear you.

Examiner Bennett: I say, you seem to be opening up a field of inquiry that may go a good ways.

Mr. Martin: No, sir. That is the only question I am going to ask him.

6855

Examiner Bennett: All right. I will let him answer. Overruled.

A. Yes, sir.

By Mr. Martin.

Q. Now, Mr. Sappington, with reference to the letter from Mr. Maurice Rentner to Hudson's, which is in evidence——

6856

*Louis B. Sappington—For Commission—Redirect.*

Mr. Albert: Would you mind repeating the first part?

Mr. Martin: With reference to the letter from Mr. Maurice Rentner to Hudson's.

*By Mr. Martin.*

Q. Which is in evidence as Commission's Exhibit—you know what the number of that is?

Mr. Albert: 480-A, B and C.

*By Mr. Martin.*

6857 Q. 480-A, B and C, and with reference to the 35 manufacturers listed thereon, were those manufacturers the principal source of supply for Hudson & Company?

Mr. Albert: That is objected to.

Mr. Martin: At that time.

Mr. Albert: Object to the form of the question as leading, no foundation has been laid; improper redirect, and we are now reopening up the entire case.

Examiner Bennett: I will let him answer. Overruled.

Mr. Martin: All right, sir. Go ahead.

A. Yes, sir. As far as our higher-priced business.

6858

*By Mr. Martin.*

Q. As far as what? A. As the higher-priced business is concerned in the upper price lines. These were the most important sources of supply.

Q. The witness was asked, referring to page 3701 of the record, was asked this question by Mr. Albert: "Q. Did you take any steps in 1933 similar to those mentioned in Commission's Exhibit 494 A, which is a letter from Mr.

Webber to Mr. Bergdahl, and which states: 'In the meantime, I do not believe it would be wise for us to take steps to organize other retailers in opposition to this movement.' The answer was: "A. We had no occasion, then." Now, I ask you what happened in the meantime at the time which this letter referred to?

Mr. Albert: That is objected to, if it please the Court, as improper redirect; completely covered in the testimony.

Mr. Martin: Not covered in it at all, your Examiner Bennett: Overruled. You may answer.

The Witness: Yes, sir. The Guild had changed its policy from the time we had went into it to the time this letter was written. It had included—it had included some of the lower price line manufacturers, and it had extended its scope, and it was requesting us to return copies of dresses down to less than \$3 cost, which dresses were on sale in our competitors' stores. There was no such situation in existence at the time we signed the Declaration of Co-operation. 6860

*By Mr. Martin.*

Q. Mr. Sappington, you just testified that prior to red carding you returned—prior to red carding you co-operated with the Guild? A. Yes, sir. 6861

Q. In such co-operation, did you return any merchandise? A. Yes, sir.

Q. Have you any correspondence relative to that?

Mr. Albert: That is objected to.

A. I think so.

Mr. Albert: If it please, as improper redirect.



6862

*Louis B. Sappington—For Commission—Redirect.*

Examiner Bennett: Why, I don't see why we should go into it and open up that thing again. My recollection is that it has been covered already.

Mr. Martin: All right, your Honor.

Examiner Bennett: All right. Sustain the objection.

*By Mr. Martin.*

Q. There are one or two more questions I want to ask you, Mr. Sappington: You made the statement that you made a study of the effect of red carding on Hudson's. You have testified as to what your study was based on, the 6863 opinion you had come to, and what your opinion was based on, and certain figures were produced and offered into evidence.

Mr. Albert: Now, if it please the Court, I ask—

Mr. Martin: Just a minute. Just a minute. Let me finish.

Examiner Bennett: Just a moment.

Mr. Martin: Just wait until I finish my question.

Examiner Bennett: Just a moment until the question is asked.

*By Mr. Martin.*

6864

Q. Now, certain errors were discovered in these figures which had been corrected, and the figures are now correct. Now, I ask you in view of these changes in the figures, you wish to make any change in your conclusion, or is your conclusion the same as it was formerly? A. Just the same, yes.

Q. Now, this morning you testified that because of Guild activities, you were unable to show goods which some of your competitors in this field carried. Do you



*L. B. Sappington—For Commission—Redirect—Recross*

6865

know who any of these competitors are who were showing goods which you cannot show because of being red carded?

Mr. Albert: That is objected to, if it please the Court, as improper redirect; no proper foundation has been laid.

Examiner Bennett: Overruled.

The Witness: Yes, sir.

*By Mr. Martin.*

Q. Who are they? A. Himmelhochs, Siegal's, Russek's, Kern's. Well, among others there are a large group.

Mr. Martin: That is all, your Honor.

6866

Examiner Bennett: Recross-examination?

Mr. Martin: Your Honor please, I suggest that it is—

Mr. Haycraft: There is ten minutes, yet.

Mr. Martin: Oh, that is all right.

Examiner Bennett: If he has any recross.

Mr. Albert: Yes, your Honor.

*Recross-examination by Mr. Albert.*

Q. Mr. Sappington, do you not know as a matter of fact that the basis of Guild action of red carding of J. L. Hudson Company was because of the Guild's belief that J. L. Hudson Company were evasive—

Mr. Martin: Oh—

6867

Q. —in their attempted and alleged compliance with the Guild program?

Mr. Martin: Objected to as not proper recross-examination.

Examiner Bennett: Well, I think that was gone into.

6868

*Louis B. Sappington—For Commission—Recross.*

Mr. Haycraft: What is that?

Examiner Bennett: That was gone into. He may answer.

A. No, sir.

*By Mr. Albert.*

Q. Are you aware, Mr. Sappington, in the performance of your duties in keeping in touch with the affairs in the industry, that other retailers throughout the industry are desirous of having the Guild program extended fully?

6869

Mr. Martin: Objected to as irrelevant, immaterial, and not a proper recross-examination.

Examiner Bennett: I will sustain an objection to that.

Mr. Albert: Exception.

*By Mr. Albert.*

Q. Now, in answer to Mr. Martin's question with respect to your testimony on page 3701, you stated that your different position arose from the fact that the Guild had changed its policy; is that correct? A. Yes, sir.

Q. You also mean by that that at the present time you are attempting to organize retailers against the program of the Guild?

6870

Mr. Martin: Objected to. There is no such statement that he was doing that then or now.

Examiner Bennett: Well, it was referred to. I will let him answer.

Mr. Martin: Read the question.

(Question read.)

A. No, sir.

*Louis B. Sappington—For Commission—Recross.*

6871

*By Mr. Albert.*

Q. Well, in the letter referred to the following statement is made: "In the meantime I do not believe it would be wise for us to take steps to organize other retailers in opposition to this movement." And your answer was: "We had no occasion to then." Now, since it is your contention, if you have occasion now, have you been organizing retailers against the program of the Guild? A. No, sir.

Q. You are quite certain of that? A. We have not been.

Q. Have you joined in any program of organizing retailers against the program of the Guild?

6872

Mr. Martin: Objected to. He has already answered the question.

Mr. Albert: He has been quibbling, your Honor.

Mr. Martin: He has not been quibbling at all.

Examiner Bennett: I will sustain an objection to that. Supposing he is. What does it mean to the record?

*By Mr. Albert.*

Q. Now, Mr. Sappington, you have admitted that there were certain errors in the figures that you have presented; is that correct? A. There were some errors in addition, I believe.

Q. And those errors were merely discovered as a result of an examination of the very exhibit without an examination of the figures upon which the exhibit is found; isn't that correct? A. I don't think the errors in addition have anything to do with the figures submitted. They were simply errors on the sheet which were totaled. To my knowledge, those were the only totals that were ever made of those figures, and the totals were not taken from our records.

6873

6874

*Louis B. Sappington—For Commission—Recross.*

Q. Is it not possible that in the light of the fact that errors were made on the exhibits themselves, do you or do you not admit the possibility that errors may have been made in taking the figures off your records?

Mr. Martin: Objected to. Well, go ahead.

Examiner Bennett: Overruled. You may answer.

A. I don't think there is any relation—

*By Mr. Albert.*

6875 Q. I am not asking if there is any relation, Mr. Sappington. A. Because—

Q. I am asking you this simple question: Is it your opinion, one way or the other, that since errors were made in the preparation of the particular exhibit, that perhaps errors might have been made in compiling the figures that constitute the exhibit? A. Because there were errors in that exhibit I do not believe that for that reason there may be errors in the original figures.

Q. No possibility of it? A. Because of that I do not think that there were errors in the other figures.

Q. Doesn't it indicate a tendency to err? A. If you are human you have a tendency to err, certainly.

Q. And of course men who prepare those exhibits are human? A. As far as I know.

6876 Q. And they have showed that they erred; isn't that so?

Mr. Albert: That is all, if you don't want to answer.

Examiner Bennett: All right. We will take a recess until 2 o'clock for luncheon. Thank you Mr. Sappington.

The Witness: Thank you.

(Witness excused.)

(Whereupon, at 12.30 o'clock P. M., a recess was taken until 2 o'clock P. M. of the same day.)

*Walter E. Simmons—For Commission—Direct.*

6877

AFTERNOON SESSION. 2 P. M.

Examiner Bennett: Be in order, please.

Have you a witness, Mr. Haycraft?

Mr. Haycraft: Yes, but I will have to wait a minute or two until my brief case gets here.

I will ask Mr. Simmons to come and be sworn at this time.

WALTER E. SIMMONS was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

6878

*Direct examination by Mr. Haycraft.*

Q. State your full name? A. Walter E. Simmons.

Q. Where do you live, Mr. Simmons? A. 19987 Renfrew in Detroit.

Q. What is your occupation? A. Assitsant divisional merchandise manager.

Q. Of what firm? A. J. L. Hudson Company.

Q. How long have you occupied that position? A. Since the spring of 1932.

Mr. Albert: What was that?

The Witness: Spring of 1932.

*By Mr. Haycraft.*

6879

Q. Before that what did you do? A. I was in the research department at J. L. Hudson's.

Q. For how long? A. Since early in 1928.

Q. Now, when you were in the research department what were your duties—just explain generally. A. Well, I was—main merchandise duties around the store, different types of reports, service checks, and that sort of thing, and later research director.

6880

*Walter E. Simmons—For Commission—Direct.*

Q. In your present position, what are your duties, and what have been your duties since you assumed that position, if there has been any change? A. I went down there as assistant to Mr. Sappington who had charge of the—of all the ready-to-wear. I had certain of the dress departments, the ones that I had I still have.

Q. What were the dress departments that you had under your supervision? A. You mean the numbers?

Q. The numbers and the description of the articles that you sold? A. Department 338, which was the women's better dresses; Department 339, which is inexpensive evening dresses; Department 358, which is misses' better dresses.

6881

Mr. Albert: What was that number?

The Witness: 358.

Mr. Albert: 338, 339 and 358?

The Witness: That is right.

Mr. Martin: What was 358?

The Witness: Misses' better dresses. 359, that is the gown shop; 366, women's inexpensive dresses; 367, women's moderately priced dresses.

Mr. Albert: What was that list?

The Witness: 367, women's moderately priced dresses and larger sized dresses, they are both in that department; 368, misses' inexpensive dresses; 369, misses' moderately priced dresses; 385 sports apparel shop; 386, which is the home frocks department on the street floor.

6882

*By Mr. Haycraft.*

Q. Now, what are your duties with respect to the operation of these various departments? If they vary, indicate in which way they vary. A. I handle the detail work in connection with the preparation and the checking of buying plans. I handle the advertising, which is sub



*Walter E. Simmons—For Commission—Direct.*

6883

mitted to me by the buyers, window displays and other similar publicity. I have every morning the selling sheets, getting inventories, have stock reports for these departments, go over with the buyers their buying plans when they are ready to go to market, and go over mark-downs with the buyers when they want to take them, anything in a general way, with the merchandising in these dress departments.

Q. Does each department have buyers that work under you? A. All except Department 359.

Q. What is the situation with respect to that department? A. Department 359, the merchandise is bought by Miss Fowler, who is in New York. We have an assistant here who is in charge of the department, locally, an assistant buyer.

6884

Mr. Albert: May I ask that be repeated?  
(Answer read.)

Mr. Albert: Thank you.

*By Mr. Haycraft.*

Q. Now, will you name the buyers for the other departments that you have named already? A. Yes, Departments 338, 358, and 369, Mr. Touff.

Q. Mr. David Touff? A. Mr. David Touff.

Q. All right. A. Departments 339, 368 and 366, Mr. Frank Wilton.

Mr. Albert: What are those numbers again? 366— 6885

The Witness: Yes.

Mr. Albert: What is 366, women's inexpensive—

Mr. Feldman: Women's inexpensive dresses.

The Witness: 367, Miss A. Kimball; 385 and 386, Miss E. Hromek. 359 I have already given.

6886

Walter E. Simmons—For Commission—Direct.

*By Mr. Haycraft.*

Q. How often do you contact the buyers in these departments? A. When they are in town, numerous times every day; they are all on the same floor.

Q. Prior to June, 1933, were these same individuals in charge of the department, of the respective departments buying in the respective departments, or have there been changes since that time? A. There have been changes.

Q. Who were the buyers of these departments in June 1933? A. I am not positive of all the buyers.

Q. Was Mr. Touff? A. I can tell you the ones who were not there.

6887

Q. Which of those buyers was not with you in June 1933?

Mr. Keller: Mr. Haycraft, will you speak a little louder, please? I cannot hear.

The Witness: What was the question, please?  
(Question read.)

A. Miss Hromek and Miss Fowler was not doing any buying for us.

*By Mr. Haycraft.*

Q. When did Miss Fowler start to buy for you? A. The fall season of 1935.

Q. And started about in August, would you say? A. The merchandise that she first brought in came in in the end of July and the first part of August.

6888

Q. Just state briefly what the usual procedure is for the buying of merchandise in your department, say, during the year 1935?

Mr. Albert: Will you please read the question.  
Mr. Haycraft, would you mind speaking a little bit louder? We cannot hear the questions.  
(Question read.)

A. The buyer first makes up his plan that he has so much that he needs to buy, and then the usual procedure is to go into the market and make those purchases.

*By Mr. Haycraft.*

Q. What is the market that the buyers go to, or did go to in 1935? A. Principally New York City.

Q. Are you familiar with the Fashion Originators Guild of America, Inc.? A. Yes, sir.

Q. When did you first learn of that Guild? A. I don't recall exactly.

Q. When did you first learn of that in an official capacity in your store? A. I don't recall that.

Q. Can you give us the year? A. No, not exactly; I think 1934.

Q. How did it come to your attention? A. We were—the buyers received instructions that all the orders that they placed with manufacturers were going to have a Guild stamp on it.

Q. I show you Commission's Exhibit 498-A, and ask you if that is a copy of the stamp that you have in mind? A. That is right.

Q. Was that practice followed throughout that year? A. Instructions that were ordered were that every order book was to be stamped that way before the book was issued to the buyers.

Q. Did anyone check up to see whether that was done or not, to your knowledge? A. It was the duty of the office manager of the merchandise office there to check that; he had charge of the books.

Q. How long did that procedure follow in your organization? A. From the time we started we did not stop until the time that we were red carded.

Q. Can you fix that time? A. 14th of February, 1936.

Q. I notice that this stamp provides that "this order is placed upon the seller's warranty that the above garments

6892

*Walter E. Simmons—For Commission—Direct.*

are not copies of styles originated by the members of the Fashion Originators Guild of America, Inc. The purchaser reserves the right to return any merchandise which is not as warranted." I will ask you whether or not any garments were returned in your department pursuant to that warranty? A. Yes, there were.

Q. How did you determine when a garment was to be returned?

Mr. Albert: That is objected to, if it please the Court, as entirely cumulative and covered by Mr. Sappington's testimony. I do not think we should have a reiteration by every witness of the practice.

6893

Examiner Bennett: Are you pressing the question?

Mr. Haycraft: Yes, sir.

Examiner Bennett: All right; overruled.

Mr. Albert: Exception.

The Witness: Answer?

Examiner Bennett: Yes.

*By Mr. Haycraft.*

Q. Yes. A. We had a Guild shopper who would make requests that we return copies. Sometimes we returned copies when—of our own volition.

Q. First, as to the Guild shopper, when did the shopper first shop your department? A. I do not recall when she started.

6894

Q. Do you recall the year? A. No, I don't.

Q. Who was the shopper? A. Mrs. Miller, or Mead, as she was married in the course of her duties, I believe.

Q. Did she shop your store in 1935? A. Yes, sir.

Q. When you returned them of your own volition, what method did you follow to determine whether or not the garments should be returned?

*Walter E. Simmons—For Commission—Direct.*

6895

Mr. Albert: Same objection, if it please the Court.

Examiner Bennett: Overruled; you may answer.

Mr. Albert: Exception.

A. We had the original—we had a dress in our stocks at one price. We had a dress come in that the buyer of the department having this first dress would come to me and say he thought there was a copy—would be judged, and if we all agreed that it was a copy the dress was returned.

*By Mr. Haycraft.*

6896

Q. Now, with respect to the shopper, what was the procedure followed there in 1935, say along in the summer or early fall? A. It was not always the same.

Q. Well, can you give us an illustration? A. Sometimes she would come in and she usually had a sheet, a mimeographed sheet with a sketch on it. She would be looking for a dress that looked like this sketch, and sometimes she would come to the buyer, or myself, and sometimes the assistant buyer, and ask us if we had that dress in our stocks. Sometimes she came into the stocks first, found the dress, and came to us and said that she had found this dress which looked to her to be a copy of this report which she had.

Q. Then what was the procedure when she told you that? A. That procedure varied, too.

6897

Q. All right. Can you give an illustration of the different procedure that was followed, the different method of procedure? A. If she brought—eventually, regardless of how it started, the dress would eventually come to me, that she had reported as a copy. That dress was then—sometimes we admitted it was a copy and returned the dress immediately, and the report made to Mr. Sappington as



6898

*Walter E. Simmons—For Commission—Direct.*

to what actions we had taken. Sometimes, as they go down into lower-priced dresses when they were shopping for copies in lower-priced dresses—

Q. When you say "lower-priced," what price do you mean? A. \$7.75 cost, \$6.75 cost—she would come in and say that she had found a copy. We would agree that it was a copy and we would take that dress off sale at that time, and when she reported, and then we would shop to see whether competitors in town had that dress. If the same dress which she was complaining of as being a copy—if that dress, or the same dress, being a copy, was found in our competitors', downtown, around Woodward Avenue, we were permitted to put that dress back on sale rather than return it. Other times she would come in and say she had a copy and on \$10.75 cost, and up, dresses as well as on lower-priced dresses, we would wire the manufacturer and see if he acknowledged that that dress was a copy before we returned it to the manufacturer. Then, later, the dresses which were copies were not taken off sale while we were looking to see if other stores in town had those copies.

Q. When did that last situation, condition that you have just described, first take place? A. Later in the fall of last year.

Q. Were you present at a meeting in Mr. Dowley's office on November 16, 1935, which was attended by Mr. Goldston of the Fashion Originators Guild? A. Yes, I was.

Q. Do you recall who else attended that meeting beside yourself? A. Mr. Dowley, Mr. Goldston, Mr. Preston, Mr. MacDonald.

Q. Do you recall what transpired at the meeting? A. As it affected my departments?

Q. Well, will you testify, then, as to what transpired at the meeting as it affected your departments?

6900



By Mr. Haycraft.

Q. All right. To the best of your recollection what transpired; that is, who spoke and what did they say? A. There was a discussion as to how Mrs. Mead was working in the store on reported copied dresses. Mr. Goldston's request of Mr. Dowley, Mr. Preston; went over the procedure with which Mrs. Miller, Mrs. Mead was going to follow in the future. We were—she was to come in, shop our stocks. If she found a copy that she felt was a copy she was to bring it to the attention of the party in charge of the department. If that person thought that the dress that Mrs. Miller was complaining about was on sale in another store in Detroit, he was to inform Mrs. Mead to say that we would like to shop these stores and find out if the dress was there, and, if so, what stores had them. We agreed that our comparison shoppers could complete this task in two hours. At the end of two hours then Mrs. Mead was to come back to the party she talked to in the store and get their report. They reserved the right for Mrs. Mead to check this findings that we had and if we all agreed that dress was to stay on sale at the store during the time that we were checking the dress to see what stores had it in that two hour period. We were still to leave the dress on sale.

6902

Q. Was there anything said at that meeting by Mr. Goldston with respect to the right of Hudson's to reorder a dress that was under investigation? A: I don't recall.

6903

Q. Did the representatives of Hudsons, including yourself and Mr. Dowley and Mr. Macdonald, make any agreement not to re-order pending the investigation?

Mr. Albert: If it please the Court, I object to the question. The witness has answered that he doesn't recall, and now Mr. Haycraft is trying to put the answer in the witness' mouth.

6904

*Walter E. Simmons—For Commission—Direct.*

Mr. Martin: He said he didn't recall what Goldston said.

Examiner Bennett: Do you recall anything with relation to that topic?

The Witness: We didn't agree that we would re-order because no such instructions were ever issued to the buyer.

*By Mr. Haycraft.*

Q. Now, prior to this meeting do you recall any specific instance where you notified a manufacturer of garments that it had been alleged to be a copy before it was returned to the manufacturer?

6905

Mr. Albert: May I have the question?

Q. (The question was read.) A. Yes.

Q. Relate the instance that you have in mind. A. We returned—we had a request for a return of a dress to Bernard Appel.

Mr. Albert: What?

(The answer was read.)

The Witness: Because it was a copy.

*By Mr. Haycraft.*

Q. What were the circumstances under which the claim was made that it was a copy; that is, how did you arrive at that? A. Mrs. Miller came to me with a sketch of a dress in our stock. The original sketch was from a dress by Townley Frocks, and she had a copy which we had purchased from Bernard Appel.

6906

Q. Townley Frocks was a member of the Guild? A. Yes, sir.

Q. And Bernard Appel was not? A. That is right.

Q. What was the cost price of that dress; do you recall? A. Not exactly.

Walter E. Simmons—For Commission—Direct.

6907

Q. Do you know the range that it was in, approximately? A. It was \$10.75 or \$12.75.

Mr. Albert: Is that retail or cost?

The Witness: Cost.

By Mr. Haycraft:

Q. What did you do? A. We took the dress off sale and wired Bernard Appel stating that we had a complaint that his dress was a copy.

Q. What was the next step? A. Mr. Appel wired us back that positively it was not a copy.

Q. Then what did you do? A. Leaving the dresses that were still on sale, I called Mrs. Miller. I told her that was the information she had.

6908

Q. You told what? A. Told Mrs. Miller the information that we had.

Q. Oh. Then what did she do? A. She told me that she would get in touch with the Guild in New York and see what they wanted to do about it.

Q. Did you hear from her again? A. Yes. She came back and said there had been an agreement that this dress was—with Bernard Appel. He agreed it was a copy.

Q. What happened next? A. We had never heard from Mr. Appel that he had agreed that it was a copy, so we wired Mr. Appel.

Q. Well, what transpired next? A. Mr. Appel wired that it wasn't the case. This went back and forth and Mr. Goldston came to Detroit, stopped in Detroit to—Came over to see us about the dress. We had the dress off sale during this period.

6909

Q. How long a period of time transpired? A. About a week, I should say.

Q. What did Mr. Goldston have to say about it? A. We brought the garments which we had over to the large office on the sixth floor, and he told us there had been a

6910

*Walter E. Simmons—For Commission—Direct.*

controversy about this dress as to who had it first, and that if we would change the buttons on the dress we could put it out on sale.

Q. Did you do it? A. We got the buttons from Bernard Appel, changed them and put the dress out on sale.

Q. Was that dress a popular or unpopular number? Why, I would say it was fair.

Q. Fair? A. (Witness nods head affirmatively.)

6911

Q. Now, after the meeting of November 16, 1935, what was the procedure that was followed? A. Well, when the garment was shopped, told us—Miss Mead told us that we had a copy during the period of the shopping that this garment was left on sale instead of being put off the floor off sale, style, the whole style.

Q. How long did that procedure take place? Did it follow in your store, in your department? A. That was because we were following that procedure of that the argument came up, and we were red carded.

Q. Are you familiar with the incident which brought about the red carding? A. Yes.

Q. What was the incident?

Mr. Albert: That is objected to, if it please the Court, as cumulative.

Examiner Bennett: Overruled. If you know, If you know, tell about it.

6912

The Witness: It was over a complaint of a dress which we had in our inexpensive dress department which was supposed to be a copy, which we found to be on sale in competitive chain stores in downtown Detroit. Which we did not take off sale which we did not return.

*By Mr. Haycraft.*

Q. Did you follow the procedure which you have just outlined with the shopper? A. Mr. Wilton did.

Q. When did that take place? A. Early in February.

Q. Now, you said a moment ago—strike that out. When did you first learn that there was any objection to that procedure on the part of the Guild? A. Mr. Wilton received a wire from the Guild.

Q. Do you know the date of that? A. No, I don't.

Q. Do you know where that telegram is? A. No, I don't.

Q. What transpired after the receipt of the telegram?

A. I took the telegram to Mr. Sappington.

Q. Then what happened? A. I don't know.

Q. That was the end of it, as far as you were concerned?

A. We were told to leave the dresses on sale.

Q. When did you first learn that the store had been red carded? A. At a meeting in a conference room on the eleventh floor.

Q. What date? A. I don't recall.

Q. Did you ever attempt to buy any goods, any merchandise from Guild manufacturers subsequent to that time? A. I didn't.

Q. Did you ever accompany a buyer to the manufacturer's showrooms in an attempt—where the buyer was trying to buy garments from Guild manufacturers subsequent to that time? A. Yes, sir.

Q. When? A. In February, 1936.

Q. Can you give us the date? A. 20th and 21st, I was in New York.

Q. Who was the buyer? A. Mr. Touff.

6915

Q. Where did he go? A. Went to Frank Starr-Friedlander.

Q. Who did you see there? A. Mr. Friedlander.

Q. What did you do? What did Mr. Touff do, or you?

A. We were there for two purposes.

Mr. Albert: If it please the Court, I object to the answer as not responsive. He was asked what



6916

*Walter E. Simmons—For Commission—Direct.*

he did there. I further object to the question upon the ground that it is not binding upon the respondent.

Examiner Bennett: All right.

*By Mr. Haycraft.*

Q. Was Friedlander a member of the Guild at the time? A. Yes, sir.

Q. All right.

Examiner Bennett: I will overrule the objection. You may answer.

6917

Mr. Haycraft: Give him the question, please.

Q. (Question read.) A. We tried to get delivery of merchandise which we had on order with Frank Star Friedlander, and wanted to buy more merchandise.

Q. What did Mr. Friedlander tell you? A. He told us he couldn't sell us any more. He was sorry that he couldn't deliver us the merchandise that we had on order.

Q. Did he tell you why? A. Because we had been red carded.

Q. Did he say you had been red carded? A. Yes, sir.

Q. Did he tell you how he knew you had been red carded? A. No, he didn't.

Q. Did he say anything about a meeting he attended? A. Yes, he did.

6918

Q. What did he say about that? A. He told us that he had attended a meeting.

Mr. Albert: Now, if it please the Court, no proper foundation has been laid for this whatsoever. We are now getting a statement by a third party with respect to what occurred at a meeting somewhere, some time, without the slightest bit of foundation having been laid, and the answer being solely as a result of a leading question by Mr. Haycraft.



Examiner Bennett: What are you going to show—

Mr. Albert: I object to the question.

Examiner Bennett: What do you expect to prove by this witness in this connection?

Mr. Haycraft: I expect to prove the circumstances under which he was red carded.

Examiner Bennett: Under which what?

Mr. Haycraft: He was red carded.

Examiner Bennett: To prove this member's knowledge of it?

Mr. Haycraft: To prove the knowledge that came to this witness from a representative, a member of the Guild.

6920

Mr. Albert: As to what occurred some place else.

Mr. Haycraft: Yes, sir; occurred in the meeting of the Guild.

Examiner Bennett: Yes. All right. You may answer. Overruled.

Mr. Albert: Exception. If it please the Court—

Mr. Haycraft: Go ahead.

A. Mr. Friedlander told us that he felt that we had placed the order with him in good faith and he would like to deliver the orders of the merchandise which we had on order. He had attended a meeting, however, and a vote had been taken on the question of whether merchandise should be delivered that was on order when stores were red carded, and a vote had been that the merchandise should not be delivered. He had voted to deliver us the merchandise.

6921

By Mr. Haycraft.

Q. Well, what did you do then after he told you that?

A. Well, we left.

6922

Walter E. Simmons—For Commission—Direct.

Q. Where did you go next? A. Went to Milton Altmark.

Q. Whom did you see there? A. Mr. Altmark.

Q. What did he tell you? A. He was rather evasive he did not want to answer.

Mr. Albert: If it please the Court, I ask that that be stricken as a conclusion of the witness. He was asked what Mr. Milton Altmark said. Is he afraid to tell us what Mr. Altmark told him?

Examiner Bennett: If you remember.

Mr. Albert: We have a pretty good idea of what Mr. Altmark will tell this man.

6923

Examiner Bennett: Or tell the substance.

A. Mr. Altmark said he would get Mr. Post on the line and find out from Mr. Post what the status of our order was.

*By Mr. Haycraft.*

Q. Well, what did he do? A. He got Mr. Post on the line, and Mr. Post said, "To bring the fellows over."

Q. Well, what did you do next? A. We went over with Mr. Altmark.

Q. Where did you go? A. Went to the Fashion Originators Guild headquarters.

Q. Whom did you see there? A. Mr. Post, Mr. Goldston.

6924

Q. Who did the talking? A. Mr. Post.

Q. Did Mr. Altmark say anything? A. Yes.

Q. What did Mr. Altmark say? A. He said that these two fellows had come down to him to see whether or not they were going to get delivery of merchandise that was on order, that they had to—they were faced with having merchandise in their store, if they could not get what they had coming from him, that they wanted to go out and try

and buy it some place else, but they did not want to run the risk of getting in another batch from somebody else and double their stocks. He felt that was a very fair question, and that they were entitled to an answer.

Q. What did Mr. Post say to that? A. Mr. Post said that the merchandise was on order, could not be delivered, because the stores that had been red carded had breached their contract in that they had broken their agreement with the Guild. He said he was speaking off the record, that if Hudsons wanted a testimony and exact legal evidence on that, that they would have to see their lawyers.

Q. Well, whose lawyers? A. Guild lawyers.

6926

Q. Was anything further said by Mr. Post? A. He said that not only could the merchandise not be delivered but that they had counsel which indicated that that merchandise that had been placed, the orders accepted in good faith by the manufacturer, if that merchandise was now in work, that manufacturer had to dispose of that merchandise, that if he took a loss on the disposal of that merchandise, he had grounds to bring suit against Hudsons for the difference between the price which we placed on the order and the price at which he disposed of that merchandise which we had ordered.

Q. Was that all he said? A. That is all.

Q. What did you do then? A. We left with Mr. Altmark.

Q. Did you call on any other manufacturers? A. We went to A. Goodman.

6927

Q. Whom did you see there? A. Mr. Goodman.

Q. What did you say to him? A. Wanted to know what the chances were of getting the merchandise we had on order.

Q. What did he say? A. He said he was sorry, he could not ship it to us.

6928

*Walter E. Simmons—For Commission—Direct.*

Q. Did he tell you why? A. He said that we knew the conditions.

Q. That you knew them? A. That we knew the conditions.

Q. Anything further said? A. No, he said he had a lot on order for other stores that were going to suffer much worse than we would.

Q. Did he say anything more? A. No.

Q. What did you do then? A. We quit trying to get delivery of merchandise on order.

Q. Where did you go? A. Back to the office.

6929 Q. Then what did you do with respect to getting merchandise to sell in your store? A. That night we telephoned California and placed an order—open order in the California market for merchandise.

Q. Anything further? A. Mr. Touff placed some orders in New York.

Q. Now, Mr. Simmons, were you successful in replacing the merchandise that you had on order with Guild manufacturers at the time that you were red carded?

The Witness: Will you repeat that question?

Q. (Question read.) A. No, we were not, not all of it.

Q. Can you give us some illustration of instances? A. Yes.

6930

Mr. Albert: Instances of what, if it please the Court?

Mr. Haycraft: Where he was not able to get the replaced merchandise which he had on order with Guild manufacturers?

Mr. Albert: That is objected to, if it please the Court, as entirely irrelevant, solely cumulative. I think the record is clear with respect to the matter.

Examiner Bennett: Overruled. You may give instances, if you know them.

Mr. Albert: Exception.

*Walter E. Simmons—For Commission—Direct.*

6931

A. We were able to replace the orders we had outstanding with Guild houses of costumes, both untrimmed and fur trimmed in our gown shop.

Mr. Albert: What department was that?

The Witness: 359.

*By Mr. Haycraft.*

Q. From what Guild manufacturers were you purchasing costumes for your Gown Shop? A. Max Heit, Herman Beispell, and others.

Q. When were those orders placed, approximately? A. I don't recall.

Q. When did you expect to sell the goods that were on order February 14 in your Gown Shop?

6932

Mr. Albert: That is objected to, if it please the Court. It is entirely immaterial, wholly speculative and purely cumulative.

Examiner Bennett: I will sustain the objection to the question in that form. If you want to show when they would go on sale in the regular course of business, and he knows, if there is any regular course of business, well, I will be glad to have you bring it out.

Mr. Haycraft: That was the intent of the question, if the Court please. I will try it again.

*By Mr. Haycraft.*

6933

Q. When, in the ordinary course of business, would the goods which you had on order with Max Heit and Herman Beispell be sold?

Mr. Albert: If it please the Court, how can a witness answer that question unless we first have some testimony as to when he might have asked for a delivery date of those dresses? We do not know



6934

*Walter E. Simmons—For Commission—Direct.*

what type dress is, how long it would take to manufacture, or anything else. It might take three to six weeks to deliver those dresses—when he is attempting to tell us when they are to go on sale without telling us the first—

Mr. Haycraft: Better let him answer, give him a chance to answer and then we can find out.

Mr. Albert: If the Commission wants an answer of that type, I will have no objection.

Examiner Bennett: I will overrule the objection; go ahead.

Mr. Albert: Exception.

6935

*By Mr. Haycraft.*

Q. Go ahead. A. They would go on sale when we received them.

Q. Can you be any more definite as to time than that, any recollection of what the situation was in that department at that time? A. We had delivery on part of our costume orders for the spring season; part was still outstanding.

Q. What is the spring season, what period of time? A. Opens up in the Gown Shop in late January and runs through Easter.

6936

Q. What attempts did you make to get garments that would replace the garments that you had on order from Max Heit and Herman Beispell? A. We sent money to open orders to Miss Fowler, which is our customary procedure, asking her to buy costumes. We sent her types that way, names, sizes, colors, costumes—that customers wanted costumes like we had in stock, to buy those.

Q. With what success? A. She did not get any costume suits.

Q. All right. Did the red carding, and your inability to get garments from Guild manufacturers, have any other effect upon Department 359? A. Well, it made it impos-



Walter E. Simmons—For Commission—Direct.

6937

sible to get special orders on merchandise in stock, which is our customary procedure, to carry small stock, and special order, the size and color that the customer wants. That was bad from the customer's point of view.

Q. Now, with respect to the sports shop, Department 385, do you recall what orders you had outstanding in that department at the time you were red carded? A. No, I don't.

Q. Do you recall the names of the manufacturers from whom you purchased garments sold through that department? A. Yes.

Q. Who were they—Guild manufacturers, I mean to say? A. Houses like Adler & Adler, Star Maid, Kane Weill.

6938

Q. I show you Commission's Exhibit 479-B and ask you whether or not it refreshes your recollection as to what orders were outstanding at the time the Hudson Company was red carded—Department 385? A. I don't recall what type of merchandise—it would be sport dresses and sport coats in that.

Q. Does that exhibit refresh your recollection as to the orders that were outstanding at the time—

Mr. Albert: If it please the Court—

Q. —at the time of the red carding?

Mr. Albert: I object to the question upon the ground that the witness has now, two or three times, answered that he does not recall as regards that department, even after looking at the exhibit.

6939

Mr. Haycraft: That is what I am trying to find out, Mr. Examiner.

Mr. Albert: How many times do you want to try?

Examiner Bennett: If it does not refresh your recollection—

6940

*Walter E. Simmons—For Commission—Direct.*

Mr. Haycraft: I am trying to find out from the witness—

Examiner Bennett: Well—

Mr. Haycraft: —as to a certain thing, and I thought I was entitled to ask him again if it refreshed his recollection.

Examiner Bennett: Let him answer.

A. Other than they were sport dresses and sport coats I do not recall any.

*By Mr. Haycraft.*

6941 Q. I will ask you whether or not these outstanding orders were filled for that department? A. I don't recall whether any were delivered.

Q. Are you in a position to testify as to whether or not the red carding by the Guild of the Hudson Company had any effect upon Department 385? A. It hurts us very badly—

Mr. Albert: If it please the Court, the answer is "yes" or "no."

A. Yes.

Examiner Bennett: Are you in position? Yes. All right.

6942

*By Mr. Haycraft.*

Q. All right. Will you testify as to what effect it did have upon Department 385? A. It hurt us badly—

Mr. Albert: If it please the Court, I ask that be stricken. We want the facts, not his conclusion as to how it hurt him.

The Witness: We did not have golf dresses.

Walter E. Simmons—For Commission—Direct.

6943

By Mr. Haycraft.

Q. How did the fact you did not have golf dresses affect your business?

Mr. Albert: That is objected to, if it please the Court; no proper foundation has been laid.

Examiner Bennett: Overruled.

Mr. Albert: Exception.

By Mr. Haycraft.

Q. You may answer. A. Before the red carding we had the exclusive Detroit outlet for the Helen Hicks and the Raggey golf dresses.

6944

Q. Who were the Raggey golf dresses made by? A. Adler & Adler—no, Star Maid.

Q. Who made the Helen Hicks? A. Adler & Adler.

Q. Had you advertised them? A. Yes, sir.

Q. Did you have customers asking for them? A. We did.

Q. What did you tell them? A. Did not have them now.

Q. Were you able to replace them? A. No, sir.

Q. Why not? A. Those two dresses have, as I understand, "Patented" on the sleeve—and another some sort of patent—that no other manufacturer can produce.

Q. I will ask you now, Mr. Simmons, whether or not you are in a position to testify—that is, whether you have an opinion as to whether the red carding by Hudson Company by the Guild had any other effect upon any of the other departments under your supervision about which you have not yet testified? That can be answered "yes" or "no." A. Yes.

6945

Q. Now, in your opinion, what other effect has red carding had on the departments under your supervision? A. It has injured 358 department.

6946

*Walter E. Simmons—For Commission—Direct*

Q. In what way? A. Since the red carding, that department, in my opinion, has not had a first class stock \$29.75, \$39.75 street dresses.

Q. Any other effect? A. It hurt Department 338 temporarily.

Q. In what way? A. That we could not get good dresses at the \$29 and \$39 price line, street dresses.

Q. Any other? A. It has hurt Department 369 at certain price lines.

Q. In what way? A. Through an inability to get the type of merchandise which we have previously sold at those prices.

6947

Q. Are you familiar with "Vogue" and "Harper" promotions carried on in sport shops?

Mr. Albert: May I ask that the question be repeated, please?

(Question read.)

A. Yes.

Q. What is the procedure followed in such promotional schemes? A. The manufacturer would have a promotion that he was going to run in "Vogue" or "Harper's" as a fashion magazine. He would offer to include our name in this feature, usually with several sketched garments. He would come in, ask us if we wanted to be in it. Sometimes we went in. If we liked the merchandise, we went in, in those promotions.

6948

Q. Was any advertising done in connection with it? A. Sometimes.

Q. Now, in your experience, prior to the red carding, had Guild houses co-operated with the Hudson Company in such promotions? A. Our regular resources did.

Q. Do you recall some of them? A. Yes, Crystal; that is about the only one I recall.

Q. Do you recall Grossman-Siegal?



Walter E. Simmons—For Commission—Direct. 6949

Mr. Albert: If it please the Court, I do not think the witness should be led in this direct manner by Mr. Haycraft.

Mr. Haycraft: I think I am entitled to refresh his recollection, Mr. Examiner.

Mr. Albert: That is a fine refreshment of a witness' recollection by asking him the name!

Mr. Haycraft: It is usual, nothing unusual about that.

Examiner Bennett: Yes. All right. I overrule.

Mr. Albert: Exception.

The Witness: May I have the question?

(Question read.)

6950

A. Grossman-Siegal had promotions on Strooks Camel's Hair Coats.

By Mr. Haycraft.

Q. Did you participate in that promotion? A. Yes.

Q. Did you carry the garments manufactured by those manufacturers in stock prior to the red carding? A. We did.

Q. Then what effect did it have upon that branch of your business—what effect did the red carding have upon that branch of your business? A. We did not have the Strooks Camel's Hair Coats.

Q. Did you have any calls for those coats after your stock was depleted? A. We did, and still do.

6951

Mr. Albert: May I ask that the question and answer be repeated?

(Question and answer read.)

By Mr. Haycraft.

Q. When was the last time that such a promotion was put up to you? A. We have had, before the red carding, and was offered us—

6952

*Walter E. Simmons—For Commission—Direct.*

Q. Well, I mean since the red carding, has anyone attempted to get you to co-operate in such a promotion since the red carding? A. They have told us what we have missed by being red carded.

Mr. Albert: If it please the Court, I ask that that be stricken as not responsive.

Examiner Bennett: It may be stricken.

Mr. Haycraft: I will ask that the question be repeated to the witness.

(Question read.)

A. No.

6953

*By Mr. Haycraft.*

Q. Are you familiar with the Guild house known as Mutual Rosenbloom? A. Yes, I am.

Q. Is it your understanding that Mutual Rosenbloom is a Guild house—now, Mr. Simmons, what line of merchandise does the Mutual Rosenbloom manufacture and sell, or what do you buy from them? A. Sports dresses.

Q. Do they do any national advertising? A. Occasionally.

Q. Under what feature or title? A. They run features on a certain line of dresses, usually with some fabric story to them.

Q. Has Hudson's ever been invited to co-operate in that promotion? A. Yes.

Q. Before red carding or after? A. Both.

Q. Were you able to co-operate after red carding? A. No, because we could not buy the dresses.

Q. All right. Is Kane Weill another one of the sources? I think that you named them.

Q. Do they conduct nationally advertised promotional schemes? A. Occasionally.

Q. At the same time? A. Yes.



Walter E. Simmons—For Commission—Direct—Cross. 6955.

Q. And before red carding had you been invited to participate in those? A. I do not recall.

Q. Have you participated in joint advertising, promotional joint advertising with other department stores throughout the country fostered by Guild houses, Guild manufacturers, in magazines such as "Vogue" and "Good Housekeeping"? A. I don't recall.

Q. I show you Commission's Exhibit 500 and ask you if you can identify that. Do you recognize it? A. I recognize it.

Q. What is it? A. It is a wire Mr. Wilton received about the dress we didn't take off sale in February.

Q. Is that the one you mentioned in your testimony? A. That I took to Mr. Sappington. 6956

Cross-examination by Mr. Albert.

Q. How often did your buyers go into New York, Mr. Simmons? A. We have no regular schedule.

Q. How often would you say, on the average? A. I wouldn't want to make a guess.

Q. You mean to tell me that as assistant divisional merchandise manager you don't know how often your buyers go to New York? A. As often as necessary.

Q. Well, how often is necessary? A. Depends on how fast we sell the merchandise.

Q. Have you checked up on their expense accounts lately? A. I haven't. 6957

Q. Have you any knowledge or any facts upon which you can draw to determine how often your buyers have gone into the market? A. I don't have any myself.

Q. How often have you gone to New York? A. I wouldn't know exactly.

Q. How often do you think you went into New York in 1935? A. I wouldn't know.

0958

*Walter E. Simmons—For Commission—Cross.*

Q. How often do you think you went into New York in 1936? A. I don't recall.

Q. How often did you go into New York after the recording? A. I don't recall.

Q. When was the last time you went into New York? A. I don't know that.

Q. Do you know when J. L. Hudson Company signed the Declaration of Co-operation with the Guild? A. I don't.

Q. Did you ever know when these buyers signed the Declaration of Co-operation with the Guild? A. I don't recall that I did.

0959

Q. But the first time you heard of the latter was in the latter part of 1934; is that correct? A. I said I didn't recall exactly.

Q. Well, I am not asking you for any exact time. About the latter part of 1934, I believe, is what you testified to.

Mr. Haycraft: He didn't say the latter part.

*By Mr. Albert.*

Q. Some time in 1934? A. Some time, I think, I testified.

Q. When was it? Was it in the beginning of 1934, or the latter part of 1934, or the summer of 1934? A. I don't recall.

0960

Q. But it definitely was not in 1933? A. I testified on that.

Q. Was it in 1933? Could it have been 1933? A. I don't recall.

Q. You do not know? A. I don't recall.

Q. Well, now, when is the first time that you recall that you placed the Guild stamp on your orders? A. I don't recall that.

Q. As a matter of fact, didn't you testify that the first time you learned of the Guild is when you were required

Walter E. Simmons—For Commission—Cross.

6961

to put the stamp on the Guild orders in 1934? A. As I recall, that was the date.

Q. Well, that is all I asked you. A. You asked me the time.

Q. The first time you put the Guild stamp on the order was some time in 1934; wasn't that right? A. As I recall.

Q. Have you any doubt of your testimony? A. I didn't write it down when we put the first stamp on the order.

Q. Would you say you put it on in 1932? A. I don't recall.

Q. Did you put it on in 1931? A. I wasn't in ready-to-wear then.

Q. Did you put it on in 1933? A. I don't recall.

6962

Q. 1935? A. Yes.

Q. You put it on in 1935? A. (Witness nods head affirmatively.)

Q. You are certain of that? A. It was on the orders, then.

Q. I see. Well, now, working backward, was it on in 1934? A. I don't recall.

Q. Now, you don't even recall that it was on in 1934? A. I testified about that.

Q. Well, now, you testified for Mr. Martin that you put the Guild stamp on the order in 1934. Do you want to change that testimony that you are not certain of when it went on?

Mr. Haycraft: Do you want to change your question and get it right?

6963

Mr. Albert: No. The witness can correct me if I am wrong.

Mr. Haycraft: Let "Mr. Martin" stay in it, then. I am the one that asked the question.

6964

*Walter E. Simmons—For Commission—Cross.**By Mr. Albert.*

Q. Will you answer the question?

The Witness: What was the question?

(Question read.)

A. I don't recall. That is exactly what I said.

Q. When were you first told by any of your superior that J. L. Hudson Company had signed the Declaration of Co-operation with the Fashion Originators Guild? A. I don't recall.

Q. Would you say it was 1934? A. I don't recall.

6965

Q. Would you say it was 1933? A. I don't recall.

Q. You haven't any memory whatsoever about that? A. I don't recall that.

Q. The Guild stamp, Mr. Simmons, involves the question of office and store policy of J. L. Hudson Company, doesn't it? A. It did.

Q. And yet you cannot remember when that policy was first adopted, but you can give us detailed information with respect to conversations with Mr. Post and meetings addressed by Mr. Post some time ago, isn't that right? A. I don't recall the date of the stamp. I don't recall the date the stamp was placed on the orders.

Q. Well, now, I am not asking for the exact date, Mr. Simmons. All I want is an approximation of the time if you can give it to me. A. I don't recall.

6966

Q. I show you Commission's Exhibit No. 475 and ask you if that refreshes your recollection as to when J. L. Hudson Company signified its intention to co-operate with the Fashion Originators Guild? A. I don't see any date on here.

Q. You cannot tell unless you see the date? A. That is the first time I ever saw that.

Q. You never saw the Declaration of Co-operation before? A. (Witness shakes head negatively.)



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6967

Mr. Albert: May I have the—it is Commission's Exhibit 475.

The Witness: This is almost like that, except that it has this down here, and the date up here.

Q. Do you see that date, does that refresh your recollection at all? A. It says June 22.

Q. Now, you say that you never saw this Declaration of Co-operation before? A. I did not.

Q. Was it in any way discussed between you and Mr. Sappington? A. I don't recall.

Q. Now, were you not instructed in any way, or given any advice with respect to store policies at the time that J. L. Hudson Company signed the Declaration of Co-operation with the Guild? A. Yes.

6968

Q. When was that? A. I don't recall.

Q. Did J. L. Hudson Company have any other policy differing from that at the time that you were instructed about the fact that J. L. Hudson Company had signed the Declaration of Co-operation with the Guild? A. I don't recall.

Q. You do not know what the policy of the store was prior to its Declaration of Co-operation with the Guild? A. I don't recall.

Q. You do not know what it was, or you do not recall? A. I don't recall.

Q. I show you Commission's Exhibits 498-A, B, C, D and E and ask you if that is the matter in which the Guild stamp was placed on your orders? A. It is.

6969

Q. To whom does the top sheet of that exhibit go? A. To the manufacturer.

Q. That goes to the manufacturer? A. That is right.

Q. And the bottom sheets are kept by the J. L. Hudson Company for your various— A. Records.

Q. —records and files? A. That is right.

6970

*Walter E. Simmons—For Commission—Cross.*

Q. I ask you to show me if the Guild warranty stamp is contained on any of the duplicates of the orders that are retained in the J. L. Hudson Company's file?

Mr. Haycraft: Objected to as irrelevant and immaterial.

Examiner Bennett: Overruled.

A. I testified to that.

*By Mr. Albert.*

Q. No, you said it was on the top sheet only. A. On the first sheet.

6971

Q. Right, and it is not contained on the other sheet. A. On the pink and yellow copies, it was on the original.

Q. Only on the original sheet that is sent to the manufacturer? A. That is right.

Q. Now, Mr. Simmons, you stated that dresses against which the charge has been brought that they were copies would eventually be brought to you for your determination; is that correct? A. I saw them, eventually.

Q. Did you pass upon the question of whether or not they were copies? A. No, sir.

Q. Did you render any opinion on the matter? A. No, sir.

Q. Now, Mr. Simmons, what instructions were given to your shoppers with respect to their duties in so far as shopping competitors are concerned after a dress had been complained of as a copy?

6972

Mr. Haycraft: Objected to as irrelevant and immaterial.

Mr. Albert: Most material, if it please the Court. Examiner Bennett: Overruled. He may answer.

A. They were shown the dress.



By Mr. Albert.

Q. Yes. A. Asked to see if they could find that dress, or a dress exactly like it in shops up and down Woodward Avenue and around on Farmer and Gratiot.

Q. How many shops were they requested to go to? A. Only important chain stores and shops on that price guarantee, whatever it should be.

Q. Were they to continue to shop the number of stores even though perhaps if they went to the first store they found it there? A. They were to see who all had the dress.

Q. And if they found it at the first store, they were not to come back and report, but to bring in reports as regards the presence of that dress in all competitors? A. That is correct.

Q. When was the meeting in J. L. Hudson Company at which you learned of the fact that you had been red carded? A. I do not recall.

Mr. Hayercraft: "Where" did you say, or "when"?

Mr. Albert: When.

The Witness: I don't recall.

By Mr. Albert.

Q. Where was it? A. At the conference room on the eleventh floor.

Q. Was that the first knowledge of the fact that you had been red carded? A. Yes.

Q. Were minutes kept of that meeting? A. I don't recall.

Q. Was that a board of directors' meeting? A. I do not know what a board of directors' meeting would be there.

Q. Of a corporation, or was it merely a meeting of the executives of the store, of the divisional merchandise manager and the buyers? A. I don't know.

Q. Who was there? A. I don't recall everybody.

6976

Walter E. Simmons—For Commission—Cross.

Q. What? A. I don't recall everyone.

Q. Well, give us a cross-section of who was there? A. Mr. Dunham—

Q. Who is he? A. Assistant in charge of coats, some of the other garment departments.

Q. Yes. A. Mr. Preston, Mr. Oscar Webber, Mr. J. B. Webber, Mr. Dowley; there were others but I don't recall.

Q. All right. That gives us a pretty good idea of the general type of meeting it was, Mr. Simmons. Thank you. This red carding was pretty important, was it not? A. It meant we were shut out of some resources.

6977

Q. Well, it was pretty important to J. L. Hudson Company and to you, was it not? A. Certainly.

Q. Vitally affected your business, you have testified? A. Certainly.

Q. Has it not? A. Certainly.

Q. And yet you cannot remember when you first learned of the fact that you had been red carded? A. I do not know the date.

Q. You do not know the date? A. No.

Q. You are positive of that? A. Yes.

Q. How do you know that you were first red carded on February 14? A. That is what we had been told.

Q. You were told that at this meeting? A. I don't recall when we were told.

6978

Q. Who told you that? A. I don't recall.

Q. Is not your entire knowledge of this particular matter predicated upon what you have heard or read with respect to the testimony given here? A. No, sir.

Q. When was this meeting at J. L. Hudson Company in relation to February 14? A. I don't recall.

Q. Well, aside from this meeting at the J. L. Hudson Company, when was the first contact that you had with any manufacturer in which you were told that you had been red carded? A. February 20 and 21st.

Walter E. Simmons—For Commission—Cross.

6979

Q. Now, when was this meeting in relation to February 20 and 21st? A. Prior to that.

Q. How long prior to it, do you know? A. I don't recall.

Q. But you had no actual knowledge of that until you actually went out into the market, is that so? A. No.

Q. You had no personal knowledge of the fact that you had been red carded, aside from what you have told, until you went out into the market; is that not so? A. That is it.

Q. Mr. Simmons, you testified that you were told to change the buttons on the Bernard Appel dress; is that so? A. Yes.

Q. Was that the only difference that there was in the two dresses; do you know? A. That is what we were told to do.

6980

Q. Who told you that? A. Mr. Goldston.

Q. Who? A. Mr. Goldston.

Q. When? A. When he was in Detroit at the office.

Q. You have not any written memorandum of that, have you? A. No.

Q. What date did he tell you that? A. I don't recall.

Q. Approximately when? A. March, 1935.

Q. And that was the end of the entire matter? A. That meeting?

Q. Yes. A. So far as I know—we put the dress on sale.

Q. At that time? A. He told us to.

Q. Do you not know, Mr. Simmons, that there was a difference between the two dresses in so far as the cut of the collar was concerned? A. I don't.

6981

Q. Do you not recall that there was a difference in the two dresses in so far as the material was concerned? A. I did not see the material in the other dress.

Q. Do you recall, Mr. Simmons, any differences in the dresses other than the buttons? A. I don't recall.

Q. Did you ever see the original? A. No.

6982

*Walter E. Simmons—For Commission—Cross.*

Q. Now, Mr. Simmons, you testified to the fact that Miss Fowler purchased dresses for your Gown Shop, did you not? A. I did.

Q. Who is Miss Fowler? A. A girl in New York.

Q. We can presume that from the fact that we prefix the name with "Miss" and that you have testified that she was in New York. Have you no further knowledge of the fact of who your buyer is than the fact that she is a girl and that she is in New York, or is that the extent of your knowledge? A. I do not know of any title that she has.

Q. By whom is she employed? A. I don't know who pays her salary.

6983

Q. Where does she make her office? A. 1440—

Q. There is no sense in fencing with me, Mr. Simmons. You are going to tell me that she is with the A.M.C. before I get through—

Mr. Haycraft: Wait a moment. I move that be stricken from the record.

Mr. Albert: It is ridiculous that we should have to waste time in this way.

Mr. Haycraft: May counsel be admonished not to engage in this type of cross-examination? We have had too much of it in this kind of questioning. There is no need of it, and it is certainly not the type of conduct that we usually have in a hearing before the Federal Trade Commission. I respectfully ask that counsel be warned and admonished in that respect—

6984

Mr. Albert: If your Honor pleases—

Mr. Haycraft: The witness was interrupted, he was trying to answer the question when the tirade was made by counsel for the respondent.

Mr. Albert: Yes, and we get a very—

Mr. Haycraft: I move it be stricken and that counsel be admonished.



Walter E. Simmons—For Commission—Cross.

6985

Examiner Bennett: Well, it may be stricken, if you want.

By Mr. Albert.

Q. Now, who is Miss Fowler, Mr. Simmons, in her relation with the A.M.C. and in relationship with the J. L. Hudson Company?

Mr. Haycraft: That is objected to. No foundation laid that the witness knows anything about—

Mr. Albert: Then let him say he does not know.

Mr. Haycraft: It is an improper question, the way it is framed.

6986

By Mr. Albert.

Q. Is Miss Fowler employed by the A.M.C.?

Mr. Haycraft: Objected to, no foundation laid that this witness knows.

Mr. Albert: Will you tell me he does not know by whom his own buyers are employed?

Mr. Haycraft: You will find out if you will ask a proper question. He said he did not know who paid her salary. That was answer enough. You cannot by browbeating and loud language and abuse of a witness hope to get anything—

Mr. Albert: The witness does not look particularly frightened, Mr. Haycraft.

6987

Mr. Haycraft: Well, I am not worrying about the witness at all.

Examiner Bennett: All right, go ahead with the examination.

Mr. Albert: May I have a ruling, if it please the Court, on the objection?

Examiner Bennett: I did not understand there was a question pending. Read the question.

6988

*Walter E. Simmons—For Commission—Cross.*

(Question read.)

Examiner Bennett: You may answer, if you know, and if you do not—

A. I was never told. I was told Miss Fowler was going to buy our Gown Shop merchandise.

*By Mr. Albert.*

Q. As a matter of fact, does she not make her office with the A.M.C.? A. 1440 Broadway.

Q. In the A.M.C. offices? A. Yes.

6989 Q. Does she not only buy gowns for the other members of the A.M.C.? A. I don't know.

Mr. Haycraft: I wish to have the record show Mr. Examiner, that I have no objection to the record containing proper evidence of who Miss Fowler is, and her connection with the Hudson Company or with the A.M.C. It is no crime and the fact can and may be developed. What I am objecting to is the browbeating tactics employed toward this witness, when he has testified he did not know who paid her salary and did not know who employed her—

Mr. Albert: Nobody asked—

6990

Mr. Haycraft: He is not in position to know. He was not placed here for that purpose. He is not a high official of the Hudson Company and this certainly is not the proper procedure in a case of this kind.

Examiner Bennett: Well, that is disposed of.

Mr. Albert: Now, if it please the Court, we have had a long speech by Mr. Haycraft, and I want to say that it was entirely uncalled for in the light of the fact that when I asked the witness "Who is Miss Fowler?" I got the very enlightening answer that



Walter E. Simmons—For Commission—Cross.

6991

she is a girl and that she is in New York. Now, certainly, if anything shows that the witness is trying to evade giving me an answer, an answer of that kind demonstrates it fully.

Mr. Martin: You also leave out that he had previously testified that she was their buyer.

Mr. Haycraft: What more do you want, and what more is relevant to the issues in this case?

Mr. Albert: May I quote your own remarks, Mr. Haycraft? Let me try the case in my own way.

Examiner Bennett: Off the record.

(There was a discussion off the record.)

6992

By Mr. Albert.

Q. Do you not know, as a matter of fact, Mr. Simmons, that Miss Fowler purchases dresses for Strawbridge & Clothier, William Taylor Son—

Mr. Haycraft: That is objected to; he has already answered the question.

Examiner Bennett: Well, if he does not know, he can say he does not know.

Mr. Haycraft: He has already said he did not know.

Mr. Martin: He already said he did not know, your Honor.

A. I answered once that I did not know, your Honor. 6993

Examiner Bennett: All right.

By Mr. Albert.

Q. Does my mentioning of the names of those members of the A.M.C. refresh your recollection? A. No, sir.

Q. Now, did any of these manufacturers with whom you had a discussion tell you anything else as a reason why

6994

*Walter E. Simmons—For Commission—Cross.*

they would not sell you other than the fact that you were red carded? A. I told them what Mr. Friedlander said about the meeting he attended.

Q. Yes. Well, did you ask him why you were red carded? A. We asked him if he knew, yes.

Q. Did you ask him why you were red carded, not if he knew that you were red carded? A. No.

Q. You were not interested in finding out why you were red carded, were you? A. We asked him if he knew.

Q. What? A. We asked him if he knew why we were red carded.

Q. Yes. A. We did not ask him why.

6995

Q. You did not ask him? A. No.

Q. Did you ask anybody why you were red carded? A. No.

Q. Do you know why you were red carded? A. I have been told.

Q. Aside from that you do not know? A. No.

Q. Who told you? A. I don't recall.

Q. You do not know who told you you were red carded?

A. I don't recall who told us why we were red carded?

Q. Yes. Is that correct? A. No.

6996

Q. Now, Mr. Simmons, with respect to these promotions in "Vogue" and in "Harper's," is this, roughly, what you are referring to, that certain manufacturers advertised their dresses in "Vogue" and in "Harper's," and in their advertisements they list certain retail stores where these dresses are sold? A. That is right.

Q. Is that, roughly speaking, the idea? A. Yes, that is correct.

Q. And you do not pay anything toward the printing of that advertisement? A. No.

Q. Do you? A. We have a—

Q. It is a courtesy extended to you by the manufacturers? A. In return for buying merchandise.

Q. And it arises from the fact that he believes that as a high type retail store it would enhance the value of his goods if it were known that you were selling them; is that not so? A. I do not know why he does it.

Q. Now, is it not a fact that the reason why you are not being invited to be listed in "Vogue" and "Harper's" is because you refused to protect his styles, and because it is possible for your customers to obtain copies from your store of the merchandise of high style that is being sold by the other retailers who are listed in those advertisements? A. That is not what I was told.

Q. Yes. You testified that you were told that the reason why you were not put in the advertisements was because you were red carded. A. That is right.

Q. But every effect has a cause; is that not so?

Mr. Haycraft: Objected to.

Examiner Bennett: Well—

Mr. Haycraft: That is argument, argumentative.

Examiner Bennett: I will sustain the objection. We will adjourn until 10 o'clock to-morrow morning.

(Whereupon, at 4.30 o'clock P. M., August 19, 1936, the hearing in the above-entitled matter was adjourned:)

7000

*Walter E. Simmons—For Commission—Cross.*

Court Room No. 722,  
Federal Building,  
Detroit, Michigan,  
August 20, 1936.

Met, pursuant to adjournment, 10 A. M.

Before: JOHN W. BENNETT, Examiner.

(Same Appearances.)

PROCEEDINGS.

7001

Examiner Bennett: Be in order, please. This is a re-convening of Docket No. 2769, the Federal Trade Commission against Fashion Originators Guild of America, Inc. et al., from yesterday. The witness may take the stand. You may proceed, Mr. Albert, when you are ready.

WALTER E. SIMMONS resumed the stand and testified further as follows:

*Cross-examination (continued) by Mr. Albert.*

7002

Q. Now, Mr. Simmons, you have testified with respect to a certain gathering at which Mr. Post made some remarks. Was that the first—shall I say—conference in Detroit which he addressed, or was it the second? A. That was the only one I attended.

Q. Do you know how many times he was in Detroit? A. I wouldn't have any way of knowing.

Q. Do you know whether or not this conference about which you have been speaking was the second or his first? A. No, I wouldn't know.

Q. Do you know that he was in Detroit at another conference? A. No, I don't know.



Walter E. Simmons—For Commission—Cross.

7003

Q. Can you fix the time at which this conference took place? A. I believe—

Q. Which you attended? A. I believe I testified to that.

Q. Well, will you tell me again? A. The spring of 1935.

Q. By that do you mean April or May? A. Along in there.

Q. That is, you are not definitely certain which— A. No, I didn't make any notes.

Q. —which month it was? A. No.

Q. Now, Mr. Simmons, what is it that Mr. Altmark told Mr. Post when you went with Mr. Altmark to Mr. Post—you at least remember testifying to that yesterday, do you not? Do you recall that? A. Yes.

7004

Q. What was it that he said? A. Mr. Altmark said that these two gentlemen had come to see about whether they were going to get delivery on the merchandise which they had on order with Mr. Altmark.

Q. What else did he say? A. That he thought that was a fair question and he had come over to get an answer.

Q. What else did he say? A. He thought it was a fair question and that while we had been—why we were trying to find out in order that we would not get a double stock in case this merchandise should be delivered.

Q. Was what Mr. Altmark said a fair representation of the conversation that you had had with Mr. Altmark? A. Yes.

Q. I mean, I take it from the way you told the story you had a conference with Mr. Altmark, you went up to Mr. Post, and then Mr. Altmark told Mr. Post what you and he had been discussing? A. We went to Mr. Altmark and told him what we wanted to find out. He called Mr. Post, and then he talked to Mr. Post in Mr. Post's office.

7005

Q. What do you mean by that, you were afraid you would have double stocks?

7006

*Walter E. Simmons—For Commission—Cross.*

Mr. Albert: At this time, may it please the Court may I ask that Mr. Touff be excused from the room if he is here?

Examiner Bennett: Yes.

(Thereupon Mr. Touff left the court room.)

The Witness: Shall I go ahead?

Examiner Bennett: Yes.

A. Well, we had certain amounts of merchandise on order, in this case the Department 358. If we were not going to get this merchandise we had to have things to sell because we were getting ready for a fashion week.

7007

*By Mr. Albert.*

Q. Yes. A. If we would go out and buy more merchandise and then Mr. Altmark would deliver his merchandise, we would have that much more than we needed, because when we had placed these orders we thought we had covered our needs to the best of our ability.

Q. Did you expect any difficulty in placing the orders then, to cover the merchandise that Mr. Altmark might not send you? A. We had not shopped them.

Q. You had not even attempted to, is that it? A. We wanted to know what was going to happen first to what we had on order.

Q. That is, you had made no attempt to replace the merchandise? A. Mr. Touff had been down before I went to New York.

7008

Q. Yes. A. And I am not familiar with just what he had done.

Q. You do not know? A. No.

Q. These orders, Mr. Simmons, that were not filled, I presume have not been paid for, have they?

Mr. Martin: Objected to as immaterial.

Examiner Bennett: Have not been paid for, you say?



Walter E. Simmons—For Commission—Cross.

7009

Mr. Albert: Have not been paid for.

Examiner Bennett: Well, if he knows I will let him answer.

A. It is not my job to pay the bills.

By Mr. Albert.

Q. Do you know whether they have been paid for? A. No, I never check the bills that are paid or not paid.

Q. Is J. L. Hudson Company in the habit, if you know, of paying for merchandise that is not delivered? A. They pay after they get an invoice.

Q. Well, do you think you could risk saying that, in your opinion, they have not been paid for? 7010

Mr. Haycraft: That is objected to; he does not know.

Examiner Bennett: Well, I will sustain an objection.

Mr. Albert: Very well.

Examiner Bennett: There is no use in filling up the record with statements from a witness who does not know anything about it.

Mr. Albert: All right.

By Mr. Albert.

Q. Now, Mr. Simmons, have you any idea of the number of manufacturers available to the A.M.C. for the purchase of dresses at the price lines covered by the Guild? 7011

Mr. Haycraft: That is objected to.

Examiner Bennett: He may answer.

A. I have no idea what is available.

7012

*Walter E. Simmons—For Commission—Cross.**By Mr. Albert:*

Q. None whatsoever? A. No.

Q. Did you ever see a list of manufacturers who were not Guild houses? A. I don't recall that I did.

Q. By that do you mean that you may have seen it, but you are not sure, or do you mean that you have never seen such a list? A. I don't recall that I ever saw a list.

Q. Do you know that the A.M.C. has supplied its member stores with a list of available resources? A. No, I don't know it.

7013 Q. And since you don't know that there is such a list of course you have never attempted to contact the houses that are on that list, have you?

Mr. Haycraft: Objected to.

Q. Except——

Mr. Haycraft: The respondent——

Q. Except as you may know them aside from that list?

Mr. Haycraft: Object to it. The witness is not a buyer nor put on as a buyer.

Mr. Albert: He is in——

Mr. Haycraft: There is no occasion——

Mr. Albert: He is in charge of his buyers, your Honor. He certainly ought to know what his buyers are doing.

7014

Examiner Bennett: I will let him answer.

Mr. Haycraft: No foundation laid for that.

Examiner Bennett: Overruled. You may answer. I think there is a statement in the question, though, that is not exactly enlightening.

Mr. Albert: I withdraw the question.

Mr. Haycraft: I will say for the record, Mr. Examiner, that we have a buyer for the Hudson

Company—that is waiting to testify in this case, and any question of this kind may be propounded to him and an answer received.

Mr. Albert: Mr. Haycraft got up yesterday afternoon and whined in a long speech that I was not permitting him to cross-examine, to question this witness whom he was presenting as having full knowledge of everything.

We are up against the same proposition, that he is handing me on to some other subordinate.

Mr. Haycraft: That is absurd.

Mr. Albert: When I start to cross-examine this witness—

Examiner Bennett: Go ahead.

Mr. Haycraft: I have never said this witness knew everything.

Examiner Bennett: Go ahead with the cross-examination.

Mr. Albert: Which obviously he does not.

Mr. Haycraft: He knows enough. Don't worry about that.

*By Mr. Albert.*

Q. Do you know whether that list was made available to your buyers? A. No, I don't.

Q. You don't know anything at all about that list; do you? A. No.

Q. You don't know whether your buyers have it or not? A. No.

Q. Did you ever hear of it? A. I don't recall that I did.

Q. You are in supervision of these buyers, aren't you?

A. That is right.

Q. You have to pass upon their listing of what they wish to buy at a particular time, don't you? A. Pass on the money and the pieces that they are going to buy.

7018

*Walter E. Simmons—For Commission—Cross.*

Q. Mr. Simmons, will you tell me whether or not to your knowledge any of the departments under your supervision were furnished with a list of resources compiled by the A.M.C.? A. I don't know. They may have gotten it in New York.

Q. I beg your pardon? A. They may have gotten it in New York. I don't know.

Q. They didn't get it through the J. L. Hudson Company? A. Not through me.

Q. You have never had any discussion with them about any such list? A. No.

Q. Did you compile a list of available resources? A. No.

7019

Q. Did you investigate in any manner the possible resources that were available to your buyers? A. I instructed the buyers to.

Q. But you paid no attention to it? A. I am not that familiar with the market.

Q. Mr. Simmons, what do you consider a first-class stock? A. A stock that as nearly as possible takes care of our customer demands.

Q. What do you consider is your customer demand? A. The things that they ask for from day to day, and week to week.

Q. What do they ask for from day to day? We will pursue this until you finally give me the answer. A. It is a certain type of garment.

7020

Q. What type of garment? I can follow you right along, Mr. Simmons. A. Good, high fashion, style right, well made, well tailored, good fabrics, desirable colors at the right price.

Q. What do you mean by high fashion? A. Good style.

Q. That is what you mean when you said you could not get a first-class stock in Department 358? A. That is right.

Walter E. Simmons—For Commission—Cross.

7021

Q. What are the things that you consider good style?

A. I don't understand the question.

Q. What constitutes good style? What are the elements that make up good style? A. The styling of the garment, the cut of it, the fashion points on the garment, the trimming.

Q. Do you mean by that the novelty of the style? A. Not necessarily.

Q. But possibly? A. Possibly.

Q. And the fact that is a style is an origination? A. I don't know about that.

Q. You don't know whether there are originals; do you? A. I never investigated.

Q. Didn't you ever try to determine whether or not a dress was an origination or not? A. No.

Q. You don't know the difference between an original dress and a copy? A. No.

Q. Do you know the difference between a dress and a copy of that dress? A. I know that if we have a dress at one price, and we get it in another price, and they look just alike—

Q. Yes? A. That they are alike.

Q. One is a copy of the other? A. They might both be copies of something else; I don't know.

Q. I am not asking you that, Mr. Simmons. A. You asked me if one was a copy of the other.

Q. That is all I am asking you.

7022

7023

Mr. Haycraft: You got his answer. There is nothing wrong with that.

By Mr. Albert.

Q. I didn't ask you to contrast it with anything else.

Mr. Haycraft: Ha, ha!

A. No, I don't know if one is a copy of the other.



7024

*Walter E. Simmons—For Commission—Cross.*

Q. You don't know? A. No.

Q. Well, now, have you ever made a distinction between an original dress and a copy? A. No.

Q. You are quite certain of that? A. Yes.

Q. Now, let's turn to page 3840 of the record, where you were speaking a little volubly, and you weren't careful.

Mr. Haycraft: That is objected to, Mr. Examiner; the form of the question.

Q. And we find this question.

Examiner Bennett: Sustained.

7025

*By Mr. Albert.*

Q. (Reading) "Q. When you returned them of your own volition, what method did you follow to determine whether or not the garments should be returned?"

Mr. Haycraft: That is objected to.

Q. (Reading) "A. We had the original." A. That is the original as far as our stocks were concerned. That was the first dress of that particular style that came to our stocks.

Q. So that in so far as you knew up to the time that you had it, nobody else had made a dress of that style?

A. We had never had it in our stock.

7026

Mr. Albert: May I ask the repetition of the witness' previous answer?

(Answer read.)

*By Mr. Albert,*

Q. So that your conception of what is an original dress is the original delivery to you; is that it? A. No.

Q. What do you mean? A. I have no conception of what an original style might be, as far—I started to say



that I have no idea of what a conception—of what an original style is, but that when a buyer comes to me and says, "I have this garment," as far as we are—I am concerned, that is the first time I have seen it. It is to the interest—my interest, if he has a good dress, not to have that dress sold at a lower price under certain conditions.

Q. Well, now, then, wouldn't you agree with me that your conception, or the J. L. Hudson's conception of what is an original dress is determined by the fact that the dress is originally delivered to J. L. Hudson, and that the first party that delivers the dress to J. L. Hudson is regarded as the original originator of the dress?

Mr. Haycraft: That is objected to, the form of the question. 7028

Examiner Bennett: Well, I will let him answer.

Mr. Haycraft: Includes the J. L. Hudson Company, which is not—

A. My personal ideas aren't the J. L. Hudson Company's ideas, necessarily. I don't speak for them.

By Mr. Albert.

Q. You don't speak for them? A. Not as to the market; No.

Q. Who are you speaking for, the Emporium of San Francisco? A. No, my own ideas.

Q. That is all you have been giving us here? A. What I do at the store. 7029

Q. Your personal opinions? A. Not of my personal opinions, all of them. Sometimes you ask my personal opinions.

Q. Yes. A. Sometimes you didn't.

Q. Well, now, I am not asking for your personal opinion. You are the assistant merchandise or assistant divisional merchandise manager of J. L. Hudson Company; are you not? A. Right.

7030

*Walter E. Simmons—For Commission—Cross.*

Q. And you are subordinate, as I understand, to Mr. Sappington, are you not? A. Right.

Q. And I believe that you were here and heard Mr. Haycraft yesterday say that you had knowledge of a great many things in connection with the business; did you not?

Mr. Haycraft: That is objected to as not being a correct statement of what I said.

Examiner Bennett: Sustained. I don't see that that is important. Go ahead with the witness.

*By Mr. Albert.*

7031

Q. Aside from the fact, Mr. Simmons, of a determination of the time when a dress is delivered, have you any knowledge or have you ever attempted to find out whether or not a dress is an original? A. No.

Q. And J. L. Hudson & Company has co-operated with the Guild ever since they signed the declaration of co-operation?

Mr. Haycraft: I move to strike that. I object to that question and move that it be stricken.

Q. Isn't that so?

Examiner Bennett: Has this witness testified to that?

Mr. Albert: Oh, yes.

7032

Mr. Haycraft: I don't know when. That question was not propounded to this witness.

Examiner Bennett: He testified, as I remember, of beginning at some indefinite time to put a certain stamp on the orders and continued that until the red carding.

Mr. Albert: Very well, your Honor. To save time, I will withdraw the question.

By Mr. Albert.

Q. From the time, is it your contention that J. L. Hudson & Company—or, rather, from the time that you first put the stamp on the orders, did J. L. Hudson co-operate with the Guild? is that correct? A. As far as I know, to the time of the red carding.

Q. Are you at all doubtful about it as far as your departments are concerned? A. I don't know what was done by the firm.

Q. That is, you won't assume responsibility for what was done in your departments; is that it? A. I said I didn't know what was done by the firm.

Q. I am asking you about your departments. Did your departments co-operate with the Fashion Originators Guild from the time that you first put that Guild stamp on the orders? A. The instructions I had for my departments as to co-operation with the Guild—— 7034

Q. Yes? A. —was to put the stamp on the orders——

Q. Yes? A. —and to co-operate with the Guild shopper.

Q. Is the total extent of your attempt to co-operate with the Guild merely putting that stamp on the order, as far as your departments are concerned? A. The buyers then went further, probably.

Q. You don't know? A. I don't know what the buyers do in the market.

Q. You haven't the slightest idea with respect to it? A. No.

Q. Now, Mr. Simmons, in answer to my question as to whether or not your departments fully co-operated after you put the stamp on, you said that you had no idea of what your buyers did in the market; didn't you? A. (Witness nods head affirmatively.) 7035

Q. What has your buyers, what they did in the market, got to do with your departments co-operating here in the J. L. Hudson Company store? A. The buyers do for the departments.

7036

*Walter E. Simmons—For Commission—Cross.*

Q. Aren't you willing to declare for your departments that your departments have fully co-operated with the Fashion Originators Guild since the time that you put the stamp on the orders? A. I can't testify for the buyers.

Q. I am asking you for your departments that you have supervision of and that you have control of, and with respect to which you exercise a modicum of control. A. I told you that the buyers were instructed——

Q. Didn't you say that you had seen your buyers four or five times a day? A. Yes.

Q. Well, now, didn't you know from them whether or not they were co-operating with the Guild? A. I didn't ask them.

7037

Q. Didn't you make any effort to determine whether or not they were obeying the asserted policy of your store, or wasn't that one of your duties? A. I told you what my duties were.

Q. And that was one of them? A. To see that they put the stamp on and to co-operate with your shopper.

Q. All right. Now, how did you perform your duties of seeing that they co-operated with the shopper? A. Made it very definite that they were to be courteous to Mrs. Miller when she came into the store.

Q. Yes. A. Gave her the information that she requested.

Q. Yes. A. To the best of my knowledge they always did that.

7038

Q. And that is the state of your control over your departments to determine whether or not they have co-operated with the Guild— A. In addition——

Q. Is that what you want us to understand?

Mr. Haycraft: Let him answer—wait a minute.

Q. In addition to making sure that the stamp is on the order.

By Mr. Albert.

Q. Yes. Mr. Simmons, as the assistant divisional merchandise manager of J. L. Hudson Company, controlling the various buyers in these departments, and as one naturally interested in the dress industry, have you any knowledge as to the contentions of manufacturers with respect to the fact that their styles are originals and originations? A. No manufacturer ever discussed that with me.

Q. Did you ever hear of the term before "original styles"? A. Only Mrs. Miller has talked about original styles with me.

Q. And, aside from that, you never heard of the question of original styles? A. I don't recall. 7040

Q. You never discussed it with Mr. Sappington? A. No, sir.

Q. Never discussed it with Mr. Touff? A. No, sir.

Q. Never discussed it with any of your other buyers? A. No.

Q. You never asked what was all this business about copies and originals, and why do we have to determine what is a copy and what is an original?

Mr. Haycraft: Objected to, he has gone far enough, it seems to me.

Mr. Albert: Of course, if Mr. Haycraft will concede I have plumbed the depths of this witness' ignorance, I will desist. 7041

Mr. Haycraft: I will concede nothing to such a statement, and I move that that language be stricken.

Mr. Albert: I ask that the witness answer the question.

Examiner Bennett: All right, you may have an answer.



7042

Walter E. Simmons—For Commission—Cross.

A. I was instructed that we put this stamp on the order and to co-operate with the shopper, and when she came in and told me I referred that to Mr. Sappington. She—

By Mr. Albert.

Q. You never made inquiry?

Mr. Haycraft: Let him finish his answer.

Mr. Albert: He has finished. I am sorry.

Mr. Haycraft: You know he has not finished.

A. I referred it to Mr. Sappington, who made any decisions in that particular instance.

7043

Q. Did you— A. Each instance was taken up individually.

Q. Did you not ever make inquiry as to what all this—shall I say—hocus-pocus was about? Were you not ever interested in it?

Mr. Haycraft: Objected to.

A. It was part of all the day's business.

By Mr. Albert.

Q. You did not know what all this was? This was all focus-pocus to you, in your store, wasn't it?

7044

Mr. Haycraft: I object, Mr. Examiner. Do not answer the question until I have a ruling.

Examiner Bennett: Sustained.

By Mr. Albert.

Q. This business of attempting to determine whether or not a dress was a copy of something else was something new in your store, after you were instructed to put the stamp on the order, was it not? A. I don't recall.



Q. You do not recall whether or not you had ever tried to determine whether a dress was a copy before you put the Guild stamp on the orders? A. I recall that sometimes Mr. Touff, would raise a question.

Q. When? A. Oh, off and on, they would have garments come up that they were referred to Mr. Sappington.

Q. Off and on when? A. From time to time.

Q. What time? Will you fix it, please? Before you put your stamps on the Guild order, or after you put your stamps on the Guild order? A. I don't recall when we started to put the stamp on the order.

Q. Well, did you ever, prior to the time that you put the stamp on the Guild order, have to determine whether or not a dress in your store was a copy of something else?

7046

Mr. Haycraft: That is objected to. The witness has said he does not remember when he started putting the stamp on the order. How could he answer that question?

Examiner Bennett: Well, I will let him answer if he can.

(Question read.)

A. I never determined whether any of those questions—merely brought to me, and I referred them.

By Mr. Albert:

Q. So that before you put the Guild stamp on the orders, J. L. Hudson Company made investigation as to whether or not a dress was a copy of another? A. I don't recall.

7047

Q. Do you recall whether or not any of your buyers made complaint that some of your other buyers were selling copies of dresses that they bought? A. No, I don't.

Q. Do you recall your name? A. Yes.

Mr. Albert: Thank you.

Mr. Martin: I move—

7048 *Walter E. Simmons—For Commission—Cross—Redirect.*

Mr. Haycraft: I move that the last question be stricken, Mr. Examiner.

Examiner Bennett: It may be stricken.

Mr. Albert: That is all, Mr. Haycraft. I am not going to waste any more of the Commission's time to get "I don't recall."

Examiner Bennett: Have you any redirect?

Mr. Haycraft: Yes, just a few questions.

Examiner Bennett: How?

Mr. Haycraft: I have just a few questions.

*Redirect examination by Mr. Haycraft.*

7049

Q. I will ask you whether or not the activities that you engaged in in the returning of dresses to manufacturers pursuant to the warranty clause placed on orders, was a part of your co-operation with the Guild? A. Yes.

Q. Now, yesterday you were cross-examined with respect to your testimony on the Bernard Appel matter; I will ask you whether or not you had any correspondence with Bernard Appel in that connection?

7050

Mr. Albert: That is objected to, if it please the Court, as entirely cumulative; and Mr. Haycraft's testimony with respect to that matter is in the record, that this witness knows nothing about it, and he refused to permit me—and now I am making this with more certainty of what I am saying when Mr. Haycraft said I refused to permit him with respect to Mr. Sappington—Mr. Haycraft refused to permit me to have this witness identify the correspondence, or anything in connection with it, and refused to give me his correspondence on it.

Now, it is improper redirect, and anything with respect to it so far as this witness is concerned has been thoroughly covered on cross-examination.

Mr. Haycraft: Mr. Examiner, if you will recall the matter yesterday was an attempt on the part of counsel for the Commission to get this witness to identify correspondence between J. L. Hudson Company and the Guild with which the witness was not familiar, and which the witness could not identify. He had testified under cross-examination that he had had correspondence with Bernard Appel. He was not allowed, or asked, to go into that matter.

Now, in order to make the story complete, I wish to say at this time that I am going to recall Mr. Sappington, properly identify the correspondence that counsel for the respondent had in mind yesterday, and introduce it in evidence, but that is only a part of the story. This witness had correspondence with Bernard Appel with respect to that transaction. I am now asking to identify that correspondence. If it is properly identified I shall offer it into evidence. If it is not sufficiently identified I shall retain it and offer it at a later time when it is more completely identified.

7052

Examiner Bennett: Well, all right.

Mr. Haycraft: That is the reason that I am asking the question which I have now asked.

Examiner Bennett: Well, all right. Read the question.

(Question read.)

7053

A. I did.

By Mr. Haycraft.

Q. Now, Mr. Simmons, I show you Commission's Exhibit 511 for Identification, and ask you if you can identify that?

(Copy of telegram from Simmons, The J. L. Hudson Company, under date of March 4, 1935, to

7054

*Walter E. Simmons—For Commission—Redirect.*

Bernard Appel, 35 Kneeland Street, Boston, Massachusetts, was marked for identification Commission's Exhibit 511.)

A. Yes, that is a wire I sent to Mr. Appel.

Q. On what date? A. March 4, 1935.

(A telegram under date of March 5, 1935, from Bernard Appel, Inc., to Simmons, care J. L. Hudson Company, Detroit, was marked for identification Commission's Exhibit 512.)

*By Mr. Haycraft.*

7055

Q. I show you Commission's Exhibit 512, and ask you to identify that? A. That is Mr. Appel's reply to my wire.

Q. Dated when? A. It is dated March 5.

(Copy of letter under date of March 14, 1935, from assistant divisional merchandise manager, The J. L. Hudson Company, to Bernard Appel, 35 Kneeland Street, Boston, Massachusetts, was marked for identification Commission's Exhibit 513.)

*By Mr. Haycraft.*

Q. I show you Commission's Exhibit 513 for Identification, and ask you if you can identify that? A. I can. That is a letter I wrote Mr. Appel.

7056

Q. Was that a carbon copy? A. That was a carbon copy of that letter.

Q. Was the original of that letter sent to Mr. Appel in the usual course of business? A. It was.

(Letter under date of March 15, 1935, from B. Appel, Bernard Appel, Inc., to Mr. W. E. Simmons, assistant divisional merchandise manager, The J. L. Hudson Company, Detroit, Michigan, was marked for identification Commission's Exhibit 514.)

Walter E. Simmons—For Commission—Redirect.

7057

By Mr. Haycraft.

Q. I show you Commission's Exhibit 514 for Identification; and ask you if you can identify that? A. I can.

Q. What is it? A. That is a letter I received from Mr. Appel.

Q. Under what date? A. March—he sent it on March 15.

Q. When did you receive it? A. I don't recall exactly.

Q. Was it in reply to your letter of March 14? A. It was.

(Letter under date of March 27, 1935, from B. Appel, Bernard Appel, Inc., to J. L. Hudson Company, Detroit, Michigan, attention of Mr. W. E. Simmons, was marked for identification Commission's Exhibits 515-A and 515-B.)

7058

By Mr. Haycraft.

Q. I show you Commission's Exhibits 515-A and B, and ask you if you can identify them? A. Another letter from Mr. Appel.

Q. Under what date? A. Dated March 27, 1935.

Q. Is that the original? A. It is.

Q. Did you receive it? A. I did.

Mr. Haycraft: Now, I offer these exhibits in evidence, Mr. Examiner, with the statement and assurance that other correspondence from the Guild with respect to this same matter, which will complete the story, will be offered later in the day.

7059

Mr. Albert: Now, if it please the Court—

Mr. Haycraft: If you would rather, I can withhold the offer of these, but I think there might be some examination of this witness with respect to it.

Mr. Albert: I object to this, if it please the Court, as being entirely improper redirect, as being



7060

*Walter E. Simmons—For Commission—Redirect.*

another evidence of the manner in which this hearing is being conducted by the Commission. This man was on the stand yesterday and testified orally with respect to the Bernard Appel matter, and the Commission at that time did not put into evidence, or attempt to put into evidence, this correspondence which I understand he has identified as being between himself personally and Appel & Company. At that time——

Mr. Haycraft: He did not say any such thing.

Mr. Albert: What?

7061.

Mr. Haycraft: He did not say any such thing that it was his personal correspondence. What is the matter with you anyway? Don't you want to represent things right at all?

Mr. Keller: Is the firm.

Mr. Haycraft: You don't say he was representing his firm. It is not personal correspondence.

Mr. Albert: Mr. Haycraft, did you think that I meant that this witness sent it out on his personal letterhead?

Mr. Haycraft: I do not know what you meant. I know what you said.

Mr. Albert: Don't be so stupid about things.

Mr. Haycraft: You are stupid, not me.

7062

Mr. Albert: This letter was signed personally by Mr. Simmons and that is all I meant when I said he had personal correspondence.

Mr. Haycraft: It is not signed personally by Mr. Simmons or anything of the kind, and you know it.

Mr. Albert: What are your initials, Mr. Simmons?

The Witness: W. E.

Mr. Albert: W. E. S.?

The Witness: "S," yes.



Mr. Albert: And when you dictate a letter, I presume that your initials appear on the letter at the bottom; is that not so?

The Witness: Yes.

Mr. Albert: Now, I repeat that this correspondence was in the Commission's file yesterday when they examined this man orally with respect to this very transaction, and it was kept out. Now, after cross-examination, after this witness has been asked whether or not he examined the files with respect to the incident, and he said that he could not recall, we have this correspondence brought in.

I object to it, if it please the Court, on the ground that it is improper redirect.

7064

Mr. Haycraft: I believe counsel laid a foundation for it himself by his statement.

Examiner Bennett: Any other objection?

(Mr. Albert examines papers.)

Mr. Albert: No objection, Mr. Examiner. The objection is withdrawn.

Examiner Bennett: They may be received in evidence. That is, Commission's Exhibits 511 to 515-D.

(The documents referred to, heretofore marked for identification Commission's Exhibits 511, 512, 513, 514 and 515-A and 515-B, were marked as exhibits and received in evidence.)

Examiner Bennett: Do you want these?

7065

Mr. Haycraft: I want to ask him a few questions about them.

*By Mr. Haycraft.*

Q. Now, after you had received the telegram of March 5, Commission's Exhibit 512, from the Bernard Appel Company, what did you do next?

7066

*Walter E. Simmons—For Commission—Redirect.*

Mr. Albert: That is objected to, if it please the Court, as thoroughly covered on redirect, and is now covered by the exhibits in evidence.

Mr. Haycraft: I am doing that, Mr. Examiner, as a foundation question for the next exhibit.

Mr. Albert: It was a foundation question all day yesterday.

Examiner Bennett: Yes. Well, go ahead.

*By Mr. Haycraft.*

Q. You may answer. A. What was the question?

7067

Examiner Bennett: Do not go into anything you have covered on direct questioning.

Mr. Haycraft: I will try not to as much as possible; this is a basis for the next letter. That is all I want to find out.

The Witness: What was the question?  
(Question read.)

A. I called Mr. Sappington, read him this wire, and later sent it up to him.

*By Mr. Haycraft.*

Q. Well, then, did anything else transpire before you wrote to Mr. Appel on March 14, Commission's Exhibit 513? A. Yes.

7068

Q. What happened? A. Mr. Sappington had had some word that the Guild agreed—disagreed with Mr. Appel, so he called me and asked me to write Mr. Appel again.

Q. And you wrote Mr. Appel this letter of March 14?  
A. March 14.

Q. All right. Now, I call your attention to Commission's Exhibit 514, which is a letter from Mr. Appel to yourself dated March 15, and ask you what transpired be-

*Walter E. Simmons—For Commission—Redirect.*

7069

tween that letter and the next one you received from Mr. Appel dated March 27, 1935?

Mr. Albert: Objected to, if it please the Court, as fully covered—

Examiner Bennett: Well, I will let him answer.

Mr. Albert: —improper redirect.

A. Mr. Sappington had had more information from the Guild on this matter and had asked me to get in touch with Mr. Appel again.

Q. Did you do so? A. I believe we wired him.

Q. Do you have a copy of that telegram? A. No, I don't.

7070

Q. Do you know what you wired him?

Mr. Albert: That is objected to, if it please the Court.

Examiner Bennett: Well, if he knows he may answer.

A. No, I don't recall.

*By Mr. Haycraft.*

Q. Do you recall what further word Mr. Sappington gave you on the transaction? A. After this letter?

Q. No, before, between the letter of March 15 and the letter of March 27, from Mr. Appel? A. Well, the Guild still had not—there was still an argument between the Guild and Mr. Appel, and we were in between.

7071

Q. When was the meeting that you referred to yesterday in your testimony at which Mr. Goldston told you to remove the buttons, with respect to the letters which you have just—

Mr. Albert: That is objected to, if it please the Court—

7072

*Walter E. Simmons—For Com.—Redirect—Recross.*

Q. —was it before—

Mr. Albert: —as improper redirect.

Examiner Bennett: Well, I will let him answer if he knows.

A. It was after this letter.

Mr. Haycraft: All right. That is all.

*Recross-examination by Mr. Albert.*

Q. When was your recollection refreshed about all these Mr. Simmons?

7073

Mr. Haycraft: Objected to, nothing to show that his recollection was refreshed. The letters are there and speak for themselves.

Examiner Bennett: You may answer.

The Witness: What was the question?

(Question read.)

Examiner Bennett: You may answer, if there is any question about that.

A. I was shown these yesterday afternoon.

*By Mr. Albert.*

Q. Yesterday afternoon? A. Yes.

7074

Q. You had not seen them before? A. No.

Q. Did not know anything at all about them before?

A. I testified yesterday that I had wired Mr. Appel and that he had wired me back.

Q. Yes. A. And we had had correspondence with Mr. Appel.

Q. How about the letters? A. I did not recall exactly how we had gotten back and forth.

Q. How about the question of your knowledge of the Guild's activities in this particular matter? A. I testified that my contact with the Guild was through Mrs. Miller.

Q. Through Mrs. Miller? A. Yes.

Q. Did you just tell us that you wrote certain letters and sent certain telegrams as a result of certain conversations with Mr. Sappington? A. To Mr. Appel?

Q. Yes. A. Yes.

Q. And yesterday, when we were having this discussion about whether or not there was any correspondence on the matter, you were restricting your answers to "I don't recall" to what correspondence passed between J. L. Hudson Company and the Guild, were you not? A. That is what you asked me.

7076

Q. And you did not volunteer that you had any correspondence with Mr. Appel, did you? A. You did not ask me that.

Q. I said, you did not volunteer it, did you?

Mr. Haycraft: I object. He is not expected to volunteer. He is not in a place to volunteer.

Mr. Albert: Oh, I see; we are supposed to conceal facts?

Mr. Haycraft: No, you are supposed to conceal facts, but you are supposed to be lawyer enough to ask questions to get the facts.

Mr. Albert: Well, we will see whether or not I could have gotten the facts, Mr. Haycraft.

7077

Mr. Haycraft: All right, if you had asked the witness any question about correspondence he had with Mr. Appel, he would have given you whatever he knew about it, and you know it.

Mr. Albert: Supposing you had asked him about that correspondence on your redirect?

Mr. Haycraft: I did.

Mr. Albert: I have full faith and confidence that if you had—



7078

*Walter E. Simmons—For Commission—Recross.*

Mr. Haycraft: I did, and he stated his recollection about it. You did not cross-examine him about it.

Mr. Albert: Can you find that in the record for me?

Mr. Haycraft: Certainly.

Mr. Albert: Where you asked whether or not he had correspondence with Bernard Appel?

Mr. Haycraft: Certainly.

Mr. Albert: Did you offer that correspondence in evidence?

7079

Mr. Haycraft: No, I did not. I do not have to offer correspondence in evidence. Are you not lawyer enough to know that?

Mr. Albert: What?

Mr. Haycraft: Are you not lawyer enough to know that?

Mr. Albert: I am lawyer enough to know that you are not one.

Examiner Bennett: Off the record.

(There was a discussion off the record.)

Examiner Bennett: I wonder if you gentlemen are through? You may proceed, Mr. Albert.

*By Mr. Albert.*

7080

Q. Now, what information did you have from the Fashion Originators Guild, Mr. Simmons, with respect to this matter?

Mr. Haycraft: That is objected to. The witness said he had no contact with the Fashion Originators Guild.

Examiner Bennett: Overruled. He may answer.

A. My contact with the Guild was through Mrs. Miller.



*By Mr. Albert.*

Q. Did you have any knowledge whatsoever of what the Fashion Originators Guild wanted with respect to this matter?

The Witness: Will you read me the question, please?

(Question read.)

A. Mrs. Miller told me that they wanted us to return the Appel dress.

*By Mr. Albert.*

Q. Was that all she told you? A. Yes.

Q. Anything else? A. Because it was a copy of Townley's dress.

Q. Aside from the fact that Mrs. Miller told you to withdraw this dress because it was a copy of Townley's dress, you had no knowledge whatsoever of what the Guild's position was in this matter; is that so? A. Mr. Sappington, when I would call him and tell him about these, said that there was—that there was an argument about it, a disagreement.

Q. And is that all that you knew, that there was a disagreement, and that Mrs. Miller told you to return the dress because of the fact it was a copy of a Townley dress?

A. As I recall, that's right.

Q. That is all you knew? A. Yes.

Q. Now, will you tell me where you got the information from as contained in your letter of March 14 to Bernard Appel, being Commission's Exhibit 513 in evidence, reading as follows: "Now, the Fashion Originators Guild informs us that you have agreed to withdraw this stock from your line and are again demanding that we return the dress to you"? A. Mr. Sappington had given me that.

7084

*Walter E. Simmons—For Commission—Recross.*

Q. So that you did more about the Guild's position than merely that Mrs. Miller told you to withdraw the copy, and that there was a disagreement about it; is that not so?

Mr. Haycraft: That is objected to, Mr. Examiner; the question does not mean that at all. I object to the form of the question.

Examiner Bennett: Read the question.

(Question read.)

Mr. Haycraft: That language quoted there does not carry anything further.

Examiner Bennett: I will let him answer. Go ahead.

7085

A. On occasions like this, Mr. Sappington would call me, and if I had started a correspondence with Mr. Appel, as in this case, tell me what to ask him.

Mr. Haycraft: I would like to inquire, Mr. Examiner, if there are going to be any questions on cross-examination. We have waited ten minutes now since the last question was propounded.

*Recross-examination by Mr. Albert.*

7086

Q. Mr. Simmons, was it the policy of the J. L. Hudson Company to wire the manufacturer in order to determine from him whether or not his dress was a copy? A. On a complaint?

Q. Yes. A. Yes.

Q. How many times was that done, do you know? A. No, I don't recall.

Q. Have you any idea as to how many times such a manufacturer agreed that his dress was a copy of another? A. No, I don't.

Q. Did any manufacturer ever agree that his dress was a copy of another? A. No, not as I recall.

Q. That you are certain of? A. Yes, sir.

Q. What did you mean when you said that J. L. Hudson Company determined whether or not a dress was a copy of another of its own volition?

Mr. Haycraft: Objected to as not proper recross-examination. It wasn't brought out on redirect at all. I examined this witness about this particular correspondence with Appel.

Examiner Bennett: Yes. All right. Let's confine ourselves to that, please.

Mr. Albert: What was your Honor's ruling?

Examiner Bennett: I say, sustained. Let's confine ourselves to that.

7088

Mr. Albert: Very well.

Examiner Bennett: To the redirect. If there is anything in that correspondence you want to develop, why, that is all right.

By Mr. Albert.

Q. Now, Mr. Simmons, was this the regular policy of J. L. Hudson Company? I am quoting from your letter, Commission's Exhibit 513: "We are still keeping this dress in our stocks until you agree with the Guild that the dress is a copy." A. Not to return it to the manufacturer until we had gotten an agreement or had not heard from him that it was a copy.

Q. So, in other words, unless the manufacturer agrees that his dress was a copy, you kept it on sale?

7089

Mr. Haycraft: Objected to. That isn't what the witness said at all.

Mr. Albert: Well, let him contradict me if it isn't.

Mr. Haycraft: What is the use of putting things—

Examiner Bennett: Well, ask him.

7090

*Walter E. Simmons—For Commission—Recross.*

The Witness: Will you repeat the question?

Examiner Bennett: I sustain the objection in that form. The question did not cover his last answer.

*By Mr. Albert.*

Q. Now, Mr. Simmons, that your recollection has been refreshed with respect to your correspondence with him, has your recollection likewise been refreshed since yesterday with respect to Respondents' Exhibits 47, 50 and 51?

7091

Mr. Haycraft: That is objected to, first, Mr. Examiner, with respect to the form of the question. The witness' recollection has been refreshed with respect to his correspondence with Appel. It was not with the others, and even if it was, it would have no bearing upon the exhibit which respondent attempted to get in yesterday because the witness did not recall the testimony, had never seen it before, and it is not proper recross-examination.

Examiner Bennett: I will sustain the objection. I understand there is an offer—

Mr. Haycraft: There is going to be a witness who will testify and identify all of this correspondence.

7092

Examiner Bennett: There is an offer that the Commission will put that in the record in the regular way, that there is a witness who can identify them. This witness in his testimony yesterday said that he cannot identify it, and we are wasting time.

Mr. Albert: Exception.

Examiner Bennett: All right, you may have an exception.

Mr. Albert: That is all.

Mr. Haycraft: That is all.

Mr. Albert: Just a moment, your Honor.

By Mr. Albert.

Q. Mr. Simmons, is the subject-matter and the substance of Commission's Exhibit 513, a letter of March 14 by you and the statements therein contained, matters which you know of your own knowledge? A. After the first wire, things that went to Mr. Appel was what Mr. Sappington instructed me to send him.

Q. That is, did Mr. Sappington give you the information? A. That is right, because—

Q. That is contained in the letter? A. That is right.

Q. And aside from the fact that Mr. Sappington told you what to write, you have no knowledge of the accuracy of what is contained in this letter? A. I don't recall everything in the letter. Can I see it?

7094

Q. Did—

Mr. Haycraft: I object to it unless the witness is shown the letter.

By Mr. Albert.

Q. Did Mr. Sappington look over this letter before it went out? A. I don't recall.

Q. Do you know whether or not he initialed it in any way?

Mr. Haycraft: Show him the letter. I object to that question unless he sees the letter.

Mr. Albert: I am asking this witness, your Honor—

7095

Examiner Bennett: Go ahead.

Mr. Albert: He should know.

The Witness: No.

By Mr. Albert.

Q. He did not? A. No.



7096

*Walter E. Simmons—For Commission—Recross.*

Q. Did you tell him that you had sent the letter? A. He told me to send it. When he tells me to do something, I do it.

Q. He gave you the subject-matter that you were to put in the letter? A. Right.

Q. Now, did he give you this statement: "We wired you because we have agreed upon a policy of not returning a dress to a manufacturer until that manufacturer informs us that he has copied the dress from the Guild house"—did he tell you that? A. Is that what the letter says?

Q. Is that right?

7097

Mr. Haycraft: Let him see the letter. Let him see what else is in there.

Examiner Bennett: All right.

(The letter referred to was handed to the witness.)

*By Mr. Albert.*

Q. The second sentence (indicating).

Mr. Haycraft: I insist, Mr. Examiner, that the balance of the sentence be read also. It wasn't a sentence at all. It was a part of a sentence. I certainly object to that.

*By Mr. Albert.*

7098

Q. Read the balance of the sentence into the record, Mr. Simmons, and see if it has anything to do with the first part of the sentence.

Mr. Haycraft: It certainly has. It has a lot to do with it.

*By Mr. Albert.*

Q. Read the full sentence. A. All right. "We wired you because we have agreed upon a policy of not returning



Walter E. Simmons—For Commission—Récross.

7099

the dress to a manufacturer until that manufacturer informs us that he has copied the dress from the Guild house."

Q. Now the rest is what I did not read. A. "We have had cases where both the Guild house and a lower priced manufacturer copied the dresses from the same source."

Mr. Haycraft: Yes.

By Mr. Albert.

Q. With whom was any agreement made?

Mr. Haycraft: I object to that question.

7100

By Mr. Albert.

Q. That you were not to return a dress to the manufacturer unless that manufacturer agreed that his own dress was a copy? A. We had that policy in the store.

Q. With whom did you agree? You say, "We have agreed upon a policy." Whose policy was that? A. The store's, J. L. Hudson Company.

Q. You didn't agree with anybody else about it, did you? A. No.

Mr. Haycraft: Ha!

By Mr. Albert.

Q. You didn't agree with the Fashion Originators Guild about it? A. No.

7101

Q. The Fashion Originators Guild didn't say that you couldn't—you shouldn't return a copy until the manufacturer had agreed that it was? A. No.

Q. And that is— A. As far as I know.

Q. And that is what you consider co-operation with the Guild program, is that so? A. That was the policy.

Mr. Haycraft: Objected to.

7102

*Walter E. Simmons For Commission—Recross.*

A. (Continuing) That was the policy I was instructed to follow.

Mr. Haycraft: What was the last answer?  
(The last answer was read.)

*By Mr. Albert:*

Q. What are the cases, Mr. Simmons, in which a Guild house and a low priced manufacturer copied dresses from the same source?

Mr. Haycraft: If he knows.

7103

Mr. Albert: I knew very well that he was going to say that he didn't know or didn't recall.

Mr. Haycraft: I object to that statement and ask that it be stricken.

Mr. Albert: I just want another "I don't recall" on the record.

Mr. Haycraft: You want the truth. That is what you will get.

Mr. Albert: I withdraw the question.

*By Mr. Albert.*

Q. Mr. Simmons, do you know in what cases Guild houses and a lower priced manufacturer copied a dress from the same source? A. I don't recall any.

7104 Q. You mean by that that you don't know any? A. I don't recall any.

Q. You mean by that that there were some, but you can't remember? A. I can't remember whether I was told of any or not.

Q. Did you ever discuss it with Mr. Sappington? A. I don't recall.

Q. Where he told you to send this letter under your signature as a representation of an assistant divisional merchandise manager—did you ask him whether there were any cases? A. No.

Walter E. Simmons—For Commission—Recross.  
 Louis B. Sappington—For Com.—Recalled—Direct.

7105

Q. And yet you made this representation in this letter?

A. That is what the letter says.

Mr. Albert: That is all.

Mr. Haycraft: Nothing further.

Examiner Bennett: Are you through?

Mr. Haycraft: Yes. That is all with Mr. Simmons.

(Witness excused.)

LOUIS B. SAPPINGTON was thereupon recalled as a witness for the Commission, and, having been previously sworn, testified further as follows: 7106

*Direct examination by Mr. Haycraft.*

(Letter from Jack Goldston, Fashion Originators Guild of America, Inc., New York City, under date of March 16, 1935, to Mr. L. B. Sappington, The J. L. Hudson Company, Detroit, Michigan, was marked for identification Commission's Exhibits 517-A and 517-B.)

Q. Mr. Sappington, I show you Commission's Exhibits 517-A and B for Identification, and ask you if you can identify them? A. Yes, sir. 7107

Q. And tell us what that is? A. This is a letter written to me by Mr. Goldston of the Fashion Originators Guild, March 16, 1935.

(Copy of letter from Assistant General Merchandise Manager, under date of March 18, 1935, to Mr. Jack Goldston, Fashion Originators Guild of Amer-

7108

*Louis B. Sappington—For Com.—Recalled—Direct*

ica, Inc., 512 Seventh Avenue, New York City, was marked for identification Commission's Exhibit 518.)

*By Mr. Haycraft.*

Q. I show you Commission's Exhibit 518 for Identification, and ask you if you can identify that? A. Yes.

Q. What is it? A. A carbon copy of a letter which I wrote to Mr. Jack Goldston, March 18, 1935.

Q. Is it in reply to the one you just identified from him? A. In reply to his letter of March 16.

Q. Was the original of this letter sent to Mr. Goldston 7109 in the regular course of business? A. Yes, sir.

(Letter from Jack Goldston, Fashion Originators Guild of America, Inc., New York City, under date of March 25, 1935, to Mr. Sappington, J. L. Hudson Company, Detroit, Michigan, was marked for identification Commission's Exhibit 519.)

*By Mr. Haycraft.*

Q. I show you Commission's Exhibit 519 for Identification, and ask you if you can identify that? A. This is a letter from Mr. Jack Goldston to me, March 25, 1935.

Q. Did you receive it? A. I did.

7110

(Letter from Albert M. Post, Executive Director, Fashion Originators Guild of America, Inc., under date of April 2, 1935, to Mr. L. B. Sappington, J. L. Hudson Company, 1206 Woodward Avenue, Detroit, Michigan, was marked for identification Commission's Exhibits 520-A and 520-B.)

*By Mr. Haycraft.*

Q. I show you Commission's Exhibits 520-A and 520-B for Identification, and ask you if you can identify that?

A. Yes, sir.

*Louis B. Sappington—For Com.—Recalled—Direct.*

7111

Q. What is it? A. A letter from Mr. Albert Post to me, dated April 2, 1935.

Q. Did you receive that? A. Yes, sir.

(Letter from Albert M. Post, Executive Director, Fashion Originators Guild of America, Inc., under date of April 3, 1935, to Mr. L. B. Sappington, J. L. Hudson Company, Detroit, Mich., was marked for identification Commission's Exhibit 521.)

*By Mr. Haycraft.*

Q. I show you Commission's Exhibit 521 for Identification, and ask you whether or not you can identify that?

A. Yes, sir.

7112

Q. What is it? A. It is a letter from Mr. Albert Post to me, dated April 3, 1935.

Q. Did you receive that? A. Yes, sir.

(Photostatic copy of paper signed by "The Committee" was marked for identification Commission's Exhibit 522.)

*By Mr. Haycraft.*

Q. I show you Commission's Exhibit 522 for Identification, and ask you if you can identify that? A. This is a photostatic copy which was enclosed in Mr. Post's letter of April 3, 1935.

Mr. Haycraft: I offer this correspondence in evidence, Mr. Examiner.

7113

(Counsel studied correspondence.)

Mr. Albert: Now, if it please the Court, I object to Commission's Exhibit 518 unless the letter referred to in Commission's Exhibit 518 as being enclosed therein is also presented—

Mr. Haycraft: It is in evidence.



7114

*Louis B. Sappington—For Com.—Recalled—Direct.*

Mr. Albert: —for identification, or unless it is pointed out in evidence as to what is meant by that letter, which particular letter in evidence.

Mr. Haycraft: I will straighten that out in a moment.

*By Mr. Haycraft.*

Q. Mr. Sappington, calling your attention to Commission's Exhibit 518 for Identification, and to the letter referred to therein, mentioned by counsel for the respondent as being a copy of a letter from Mr. Appel, I will direct your attention to Commission's Exhibit 514 and ask you if that is the letter referred to in that Commission's Exhibit 518? A. Yes.

7115

Mr. Feldman: What is that number?

Mr. Haycraft: Commission's Exhibit 514 is the letter referred to in Commission's Exhibit 518?

A. Yes, sir.

Examiner Bennett: The documents are received as Commission's Exhibits 517 to 522, inclusive.

(Documents referred to, heretofore marked for identification Commission's Exhibits 517-A, 517-B, 518, 519, 520-A, 520-B, 521, and 522, heretofore marked, were received in evidence.)

7116

Mr. Haycraft: Now I would like to have the other exhibits, Mr. Feldman.

(Counsel hands papers to Mr. Haycraft.)

*By Mr. Haycraft.*

Q. I now show you Commission's Exhibit 519, which is a letter from Mr. Goldston to yourself under date of March 25, 1935, in which he refers to a meeting of the Piracy



*Louis B. Sappington—For Com.—Recalled—Direct.*

7117

Committee, and call your attention to the following language at the bottom of the letter: "I will be in your city within the next week or so and look forward to meeting you." I will ask you whether or not Mr. Goldston did call on you when he was in Detroit, subsequent to that letter?

Mr. Albert: That is objected to as improper redirect.

Mr. Haycraft: Mr. Examiner, I am—

Mr. Albert: Apparently is not necessary to recall this witness for that purpose.

Mr. Haycraft: Mr. Examiner, this correspondence will not tell the whole story if this testimony is not elicited, and I think, in fairness to the Examiner and the Commission and the witness as well, that the whole story should go in.

7118

Mr. Albert: Why was not this correspondence put into evidence when this man orally testified to it? If the whole story cannot be gotten just from the oral evidence aside from the letters?

Mr. Haycraft: You have your objection.

Examiner Bennett: Well, I do not conceive this as redirect.

Mr. Haycraft: No, it is not redirect.

Examiner Bennett: It is a recalling of the witness for further direct examination.

Mr. Albert: On a matter he has already testified to, your Honor.

7119

Mr. Haycraft: No.

Examiner Bennett: If he wants to go into that—

Mr. Haycraft: He never testified to that.

Examiner Bennett: —subject further to a reasonable extent, why, I will let him do so. Objection overruled.

Mr. Albert: Exception.

7120

*Louis B. Sappington—For Com.—Recalled—Direct**By Mr. Haycraft.*

Q. Go ahead. A. Yes. Mr. Goldston advised us—advised the store, and talked with me, after March 25.

Q. Did he discuss the subject-matter of a letter of March 25? A. Yes, sir.

Q. And on that occasion who was present besides yourself—was anyone else present besides yourself and Mr. Goldston? A. Mr. Simmons and Mrs. Miller.

Q. Now, then, will you testify as to what took place at that meeting?

7121

Mr. Albert: That is objected to, if it please the Court, as having been told on his previous direct testimony—

Mr. Haycraft: No, no.

Mr. Albert: He testified previously.

Mr. Haycraft: No, never mentioned on his previous testimony.

Mr. Albert: Why was it withheld?

Mr. Haycraft: It was not withheld. I told you before—

Mr. Albert: What is the sense of putting the witness on the stand back and forth like this. You put the witness on and then withdraw him and then put him back to discuss something that was up for discussion on his original examination.

7122

Mr. Haycraft: I attempted to interrogate this witness with respect to returns, and upon your objection I was not allowed to do it. This matter came up on cross-examination, as you know, with Mr. Simmons, and I am recalling this witness now in order to straighten out a situation which developed on that examination.

Examiner Bennett: All right.

Mr. Albert: Exception.

*Louis B. Sappington—For Com.—Recalled—Direct.*

7123

A. The matter of the controversy on the Appel-Townley matter was discussed. Mr. Goldston told us what had occurred in New York with reference to the work of the Piracy Committee. He asked us to return the dress to Mr. Appel. After considerable discussion of the subject, we agreed that we would return the dress to Mr. Appel, and the matter apparently was settled until Mr. Goldston supplemented his discussion by telling us after we had agreed that we would do it, that it was not necessary to do it, that if we would change the buttons on the dress we could go ahead and sell it, that if we took the buttons off, they would no longer—if we took the buttons off and put new buttons on, that the Guild would not consider the dress a copy of the Townley dress, and it would be satisfactory if we would continue to sell the garment.

7124

*By Mr. Haycraft.*

Q. And did you do so? A. I instructed Mr. Simmons to do so.

Q. Now, did you subsequently to that conversation with Mr. Goldston meet Mr. Post and discuss this matter? A. Quite some time later. I think on Mr. Post's next visit he mentioned this matter, but not—that was quite a little time later.

Q. Was that after the date of the correspondence, April 2, 1935— A. Yes, sir.

Q. —the two letters from him, April 2, 1935, and April 3, 1935? A. Yes, sir.

7125

Q. Commission's Exhibits 520 and 521? A. Yes, sir.

Q. What did Mr. Post have to say on that occasion with respect to this matter? A. Well, Mr. Post, as I recall, opened his conversation by accusing the J. L. Hudson of non-co-operation, and I told him that I thought we had co-operated fully in the matter, and stated what had occurred, and Mr. Post gave me to understand at that time

7126

*Louis B. Sappington—For Com.—Recalled—Direct.*

that he had not heard from Mr. Goldston, and he did not know what the disposition of the Bernard Appel was on the part of the J. L. Hudson Company.

Q. Was that all he had to say about it? A. That was all he had to say. He said a great deal regarding our non-co-operation before I acquainted him with the facts.

Q. What did he say about that? Did he say anything further than that, after that? A. No, no, sir; we discussed another matter entirely.

Mr. Haycraft: That is all.

Mr. Post: May I see those exhibits, please?

Mr. Albert: May we have those exhibits?

7127

(The papers were handed to counsel.)

Mr. Haycraft: We have one more question that has occurred to me.

*By Mr. Haycraft.*

7128

Q. Mr. Sappington, I call your attention to Commission's Exhibit 513, a letter dated March 14, 1935, and the following language in that letter: "In reply to our wire you informed us that your style was not a copy as you had the same dress on your line last year. Now, the Fashion Guild informs us that you have agreed to withdraw this style from your line and are again demanding that we return the dress to you. We are still keeping this dress in our stocks until you agree with the Guild that the dress is a copy. Will you kindly wire at once giving your position on the dress and also inform us whether or not we should return the dress to you." I will ask you whether or not the statement which I have just read to you was the policy of the Hudson Company at the time that the letter was written? A. When there was a disagreement—that is, when we did not agree with the Guild shopper that a dress was a copy, when it was not an obvious thing to us that it was a duplication of another



*Sappington—For Com.—Recalled—Direct—Cross.* 7129

we got in touch with the manufacturer to get his opinion and get his story, which was back of the manufacture of the dress during the time when that was in doubt about the merchandise on sale. If the manufacturer did not reply to our inquiry from him, which was often the case, as to whether or not his dress was a copy, we showed the dress to him immediately. We gave him a week or two for reply. If as in the case of the Appel situation the manufacturer strenuously objected, then we waited for more definite information before we took action. In other cases we made the decision. If we disagreed with the manufacturer, then the dresses went back to him, and that was the only case that I know of that went this far where there was any definite disagreement.

7130

Mr. Haycraft: That is all.

*Examination by Mr. Albert.*

Now, Mr. Sappington, do you recall when it was that Goldston had this conversation with you? A. Can't say exactly, but it was some time the latter part of 1934.

It was definitely in March, was it not? A. Yes, I believe it was in March. I—

It wasn't in February, was it? A. No, it wasn't in February.

Did you make any reply to the Fashion Originators' Guild letter of April 2, Commission's Exhibits 520-A and B? Is that the letter from Mr. Post?

7131

I believe so. Yes. A. No, I do not.

I read to you from this letter—that is, Commission's Exhibits 520-A and B. We were advised by our Mr. Jackson that Mr. Appel of Boston had informed you that the Jury Committee consisting of three retailers had advised his dress as no copy of the Townley Frock dress.

7132

*Louis B. Sappington—For Com.—Recalled—Cross.*

Mr. Goldston suggested that we send the actual report to you in order to assure you that the information we had transmitted was correct; and, secondly, to show you how absolutely undependable might be the defendant manufacturers' statements concerning his own transaction." Now, in the light of the fact that you say that in the end of March, 1935, Mr. Goldston told you certain things with respect to clearing up the question of whether the Appel dress was a copy, do you not think that the letter of April 2, 1935, from Mr. Post, does not support your story that Mr. Goldston told you to change the buttons, since after that conversation with Mr. Goldston there is still correspondence with respect as to whether it is a copy, and there is still correspondence with respect to the second Piracy Committee?

7133

Mr. Haycraft: I object to any second Piracy Committee. There is nothing to show that there ever was a second Piracy Committee.

Mr. Albert: We will get to that, Mr. Haycraft.

Mr. Haycraft: I object to the form of the question. The question assumes a fact that is not in the record.

Mr. Albert: Mr. Sappington has shown that he can contradict me on facts, your Honor.

Mr. Haycraft: The reference is made to a second Piracy Committee. There is no evidence of any second Piracy Committee in this record. Read the correspondence.

7134

Mr. Albert: Hold that last question.

*By Mr. Albert.*

Q. How many Piracy Committees were on the Appel dress, Mr. Sappington? A. Only one that I know of.

Q. Only one that you know of? A. That is right.



*Louis B. Sappington—Fore Com.—Recalled—Cross.*

7135

Q. I show you Commission's Exhibit 517-A, which is the letter of March 16 from Mr. Goldston to you, and read this sentence to you: "The Piracy Committee acting on the Barney Appel dress viewed—viewed—the two garments and judged it a copy." Is that the Piracy Committee you are referring to? A. I don't know anything about this Piracy Committee.

Q. Did you make any inquiry about it? A. No.

Q. You were informed of the fact that the Barney Appel dress had been adjudged a copy by a Piracy Committee in this letter; were you not? A. That is right.

Q. And despite that fact, that was not sufficient for you as to the question of whether or not the dress was a copy?

A. This is a letter—this is all I know about the Piracy Committee. That is the question you are asking me.

Q. Didn't you have faith in the statement of Mr. Goldston to you that the Piracy Committee had passed upon the matter? A. I never accepted it nor questioned it.

Q. Didn't you? A. I didn't, no.

Q. Didn't you make any inquiry with respect to it? A. No.

Q. You were a co-operator with the Fashion Originators Guild; were you not? A. That is right.

Q. At that time you were informed that a Piracy Committee had passed upon the dress, had you not? A. That is what I was told.

Q. In this particular letter? A. That is what I was told.

Q. Wasn't that sufficient for you as to the fact that it was a copy? A. No. We went ahead with the investigation.

Q. What investigation? A. Obviously it wasn't sufficient as to whether or not the dress was a copy.

Q. In other words, you insisted that the manufacturer must admit that it was a copy? A. We felt that in view

7136

7137

7138

*Louis B. Sappington—For Com.—Recalled—Cross.*

of his very strenuous objections, in view of the fact that he was a friend of ours, that we were doing business with him, that we owed some consideration to his statements, inasmuch as they were violent in opposition to the statements of the Fashion Originators Guild.

Q. Have you ever known any manufacturer to admit that his garment was a copy? A. By silent consent, yes.

Q. Hold that just a moment, Mr. Sappington. Now, I show you Commission's Exhibit—this photostat hasn't the number on it.

The Witness: It is marked some place.

Mr. Martin: It is the next one to that letter (indicating).

Mr. Haycraft: It is right under your thumb.

Mr. Albert: Yes.

*By Mr. Albert:*

Q. I show you Commission's Exhibit No. 522. A. Yes.

Q. And ask you what is the date of that Piracy Committee report? A. March 23.

Q. That is the second Piracy Committee report, is it not?

Mr. Haycraft: Does it say so?

A. It doesn't say so. It says in the matter of determining.

7140

Q. Yes. A. It doesn't say redetermining, reviewing, or anything else.

Q. Yes. Very well. Now, will you answer my original question, Mr. Sappington? A. What is the question?

Mr. Haycraft: I object to that. There is no original question pending that I know of. He answered them all.

*Louis B. Sappington—For Com.—Recalled—Cross.*

7141

Examiner Bennett: Ask him what you want.

Mr. Albert: All right. I will reframe it, your Honor. It was some time ago.

*By Mr. Albert.*

Q. You testified that Mr. Goldston gave you the information with respect to the Appel dress in March, the latter part of March, 1935? A. That is right.

Q. And you received from Mr. Post his letter dated April 2, 1935? A. Yes, sir.

Q. After the receipt of Mr. Post's letter dated April 2, 1935, was any question raised in your mind, assuming Mr. Goldston said what you say he did, that he had no authority to make a statement? A. Certainly not.

7142

Q. None whatsoever? A. None whatsoever.

Q. Despite the fact that Mr. Post's letter informs you of the Piracy Committee report and makes no mention of what you are to do in order to correct the deficiency in the dress? A. I understood Mr. Post's letter of April 2.

Q. Yes. A. Simply to be a statement to me.

Q. Yes. A. That Mr. Appel had appeared before the Piracy Committee.

Q. Yes. A. And that the Piracy Committee had judged his dress to be a copy of the Townley dress, not—and not covering in any way our action regarding the Appel dress which we had in stock. I considered that Mr. Goldston had full authority to dispose of that matter himself.

7143

Q. Did you inquire of Mr. Post, in answer to his letter of April 2, whether or not he had been told by Mr. Goldston of what you say Mr. Goldston told you? A. Why should I? He was an authority—representative of the Fashion Originators Guild with full authority. He is a member of the staff there. Why should I take my time to find out whether or not the various members of the Fashion Originators Guild keep in touch with each other or not?

7144

*Louis B. Sappington—For Com.—Recalled—Cross.*

Q. Now, this question, Mr. Sappington, of J. L. Hudson Company insisting upon a determination by the manufacturer as to whether or not his own dress was a copy was a subject of dispute between you and the Guild, was it not? A. Yes, it was, in that instance.

Q. Weren't you told by Mr. Post that every other retailer who had had that dress had returned it without question? A. I don't recall that.

Q. You do not know? A. No, sir.

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Q. Did not Mr. Post—didn't you say that Mr. Post told you that you had not co-operated? A. Yes. He understood that we still had the Appel dress in our stocks and we had done nothing further about it. He told me that he didn't know what Mr. Goldston—what arrangements Mr. Goldston had made with us. He didn't know that Mr. Goldston had told us that if we took the buttons off and put new buttons on it would be all right to sell the dress. I can understand Mr. Post's position.

Q. With respect to the statement in Commission's Exhibit 513, Mr. Sappington, the top one there (indicating).

A. No, that is 518.

Q. I mean 518. That is the one. A. Right.

Q. That is the letter from Mr. Simmons? A. No, that is the letter from myself, 518.

Q. Then I meant 513. It is also a yellow sheet of paper. A. Yes.

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Q. Did you in any way inform the Guild that it was your policy not to return dresses until the manufacturer had agreed that that dress was a copy?

Mr. Haycraft: I object to that. That isn't what the witness said was the policy of the Hudson Company.

Examiner Bennett: I will overrule the objection. You may answer.



*Louis B. Sappington—For Com.—Recalled—Cross.*

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A. No, because that wasn't our policy exactly. That was our policy in cases of dispute.

*By Mr. Albert.*

Q. Is there any statement qualifying that in this letter of March 14 of 1935 that that policy is adopted only in the case of a dispute?

Mr. Haycraft: That is objected to, Mr. Examiner, as not proper cross-examination. The exhibit speaks for itself. This witness did not write the letter. It is not the witness' letter.

Examiner Bennett: Sustained.

Mr. Albert: May I remind Mr. Haycraft, if it please the Court, that the witness through whom this letter was gotten stated that it was dictated upon the instruction of Mr. Sappington and that it was Mr. Sappington's—the substance of the letter was Mr. Sappington's and not his own. He was merely doing it by instructions and he knew nothing about it.

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Mr. Haycraft: What the witness said, Mr. Examiner, upon the question being propounded to him by counsel for the respondent, that Mr. Sappington did not see the letter and did not check the letter to O.K. it in any way. Therefore, it is not a proper question.

Examiner Bennett: It is addressed to Mr. Appel, is it?

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Mr. Haycraft: Yes. This is the Appel letter.

Examiner Bennett: I will sustain the objection.

*By Mr. Albert.*

Q. Mr. Sappington, did you give these instructions to Mr. Simmons to write the following to Bernard Appel: "We wired you because we had agreed upon a policy of not

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*Louis B. Sappington—For Com.—Recalled—Cross.*

returning a dress to a manufacturer until that manufacturer informs us that he had copied the dress from the Guild house"? A. Not exactly that way.

Q. Well, then, he made a mistake? A. I think he mis understood.

Q. You didn't correct this letter? A. I didn't see the letter.

Q. You didn't see it at all? A. Until just now.

Q. This is the first time you saw it? A. Yes. No, I have seen it in our files, seen a copy in our files, but not until after this whole matter was disposed of.

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Q. Despite the fact that you were giving instructions to a subordinate to write a letter containing statements of the J. L. Hudson Company policies, you did not examine the letter to see if he correctly stated those policies? A. I didn't think it was necessary. Mr. Simmons doesn't make very many mistakes.

Q. Then Mr. Simmons' letter of March 14, 1935, is a mistake in so far as it is a statement of what you told him to send?

Mr. Haycraft: Objected to.

Examiner Bennett: I will let him answer.

The Witness: What did he say?

Mr. Haycraft: You may answer.

A. It doesn't state the policy exactly, no.

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*By Mr. Albert.*

Q. Then it is a mistake? A. He left out something and it is incomplete. I would say it is incomplete rather than a mistake.

Mr. Feldman: A bit of omission?

The Witness: Yes.



*Louis B. Sappington—For Com.—Recalled—Cross.*

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*By Mr. Albert.*

Q. Now, Mr. Sappington, when was this conversation with Mr. Post you referred to in which the subject of the Appel letter was brought up? A. I don't recall. It was some time later, whether it was a week or two, or as long as three or four weeks, I couldn't tell you. It was so—it was enough later so that I had almost forgotten the matter.

Q. And aside from a specific discussion of what transpired between J. L. Hudson, Mr. Goldston and Mr. Appel, did Mr. Post discuss with you in any way other differences between J. L. Hudson Company and the Guild in which Mr. Post believed you were not co-operating?

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Mr. Haycraft: That is objected to as not proper cross-examination.

Mr. Albert: I want to bring out the full conversation.

Mr. Haycraft: I do not believe it is relevant.

Examiner Bennett: I will overrule the objection. You may answer, if you remember.

A. I don't believe he did. We used this as an example.

*By Mr. Albert.*

Q. Didn't he further give you an example of the fact that J. L. Hudson Company was behind or backward in its co-operation by telling you and citing to you the fact that on the Bernard Appel dress every other retailer that handled it had sent it back without question as soon as they got the first Piracy Committee report? A. Well, if he did, I didn't take it very seriously because Mr. Goldston told me—

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Q. Well, now— A. —something else.

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*Louis B. Sappington—For Com.—Recalled—Cross.*

Mr. Martin: Let him finish.

The Witness: About the same matter. He said there was a lot of controversy about the Bernard Appel dress.

Mr. Albert: That is all.

Examiner Bennett: That is all.

(Witness excused.)

Examiner Bennett: We will adjourn for luncheon until 2.10 o'clock P. M.

(Whereupon at 12.40 o'clock P. M. a recess was taken until 2.10 o'clock P. M. of the same day.)

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